TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 127.

MARIA ROMIE, PAUL ROMIE, CHARLES ROMIE, ERNEST ROMIE, AND MARY JACKS AND HER HUSBAND, DAVID JACKS, PLAINTIFFS IN ERROR,

vs.

TERESA CASANOVA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED DECEMBER 16, 1874.

SUPREME COURT OF THE UNITED STATES.

No. 127.

MARIA ROMIE, PAUL ROMIE, CHARLES ROMIE, ERNEST ROMIE, AND MARY JACKS AND HER HUSBAND, DAVID JACKS, PLAINTIFFS IN ERROR,

vs.

TERESA CASANOVA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

INDEX.

	Original.	Print.
Answer of Francisco and Teresa Casanova	6	2
Certificate	113	44
Complaint	3	1
Copy judgment for Teresa Casanova	9	4
Findings	8½	3
Order overruling motion for new trial	111	43
Notice of appeal	112	44
Plaintiff's statement on motion for new trial	11	5
Statement on motion for new trial	107	42
Testimony of Felix Buelna	48, 100	19, 39
Harry Bee	65	26
Guadalupe Don	46	19
Miguel Flores	41	17
Carlos Gulnac	37	15
Chas. T. Healy	74, 87, 106	29, 34, 41
A. F. Herman	91	36
Cornelio Hernandez	60	24
Vicente Juarez	95	29
John Murphy	54	22
J. A. Moultrie	82	32
Miguel Narvaez	57	23
Francesca Pacheco de Sepulveda	32	13
Vicente Padilla	18	8
Wesley Smith	79	31
Judgment of supreme court	114	44
Clerk's certificate	114	45
Bond	115	45
Writ of error	118	46
Citation	120	46
Agreemen'	121	47

3 In the supreme court of the State of California.

In the district court of the third judicial district of the State of California, in and for the county of Santa Clara.

MARIA ROMIE, PAUL ROMIE, CHARLES Romie, Ernest Romie, and Mary C. Jacks, and her husband, David Jacks, plaintiffs,
v.
JANE THOMAS, JOSEPH THOMAS, FRANCISCO Casanova, and Teresa Casanova, defendants.

Complaint.

The above-named plaintiffs complain of the above-named defendants, and, for a cause of action, allege that the said plaintiffs are the widow and children and heirs-at-law of John Frederick Romie, deceased,
4 and that on the 15th day of April, 1868, these plaintiffs were, and from thence hitherto have been, and yet are, seized in fee as owners and entitled to the possession of all that certain piece or parcel of land lying, situate, and being in the city of San José, in the county of Santa Clara, in the State of California, beginning at a point on the west line of the Monterey road, said point being at the junction of said west line of said road with the south line of the lot known as the ceseña lot, and now occupied by Charles Meserve, and running thence along said south line of said ceseña lot S. 65° 28′ W. 375 feet, to the east line of the old water-course, commonly known as the azequia; thence along the said east line of said azequia S. 1° 08′ W. 261 feet; thence parallel to the south line of the ceseña lot N. 65° 28′ E. 515 feet, to a point in the west line of the aforesaid Monterey road, and thence along the west line of said road N. 30° 32′ W. $237\frac{15}{100}$ feet, to the place of beginning. And that, on the day and year last aforesaid, and while these plaintiffs were so seized in fee as owners, and entitled to the possession of said premises, the said defendants unlawfully and wrongfully, and without color of title, and against the will of the plaintiffs, entered into and upon said premises, and ousted and ejected and expelled the plaintiffs therefrom, and from thence hitherto have held, and yet do withhold and de-
5 tain the possession thereof against the will of the plaintiffs, and exclude the plaintiffs therefrom; and that on the 15th day of April, A. D. 1868, plaintiffs demanded the possession of said premises from defendants, and they refused to surrender or deliver the same.

Wherefore, plaintiffs demand judgment against defendants for the possession of said premises, and for the costs of this action.

J. ALEXANDER YOELL,
Attorney for Plffs.

SANTA CLARA COUNTY, *ss:*

J. A. Yoell, being duly sworn, on his oath saith: I am the attorney of the plaintiffs in the above-entitled action, all of whom are now absent from said county, wherefore I make this verification. I have read the foregoing complaint, and know the contents thereof, and the same is true of my own knowledge, except as to the matters which are therein stated on my information or belief, and as to those matters I believe it to be true.

J. A. YOELL.

Sworn to and subscribed before me this 15th day of April, 1868.

JAS. R. LOWE, JR.,
Notary Public.

Filed April 15th, 1868.

JNO. B. HEWSON,
Clerk.

6 *Answer of Francisco and Teresa Casanova.*

[Title of court and cause.]

Come now Francisco Casanova and Teresa Casanova, and, for a separate answer to the complaint filed herein by said plaintiffs, deny and say that it is not true that on the 15th day of April, A. D. 1868, or at any other time, said plaintiffs, or any one of them, were or ever have been, or that they or any one of them yet are, seized in fee as owners, or in any other manner, or are, or were ever, entitled to the possession of the premises described in their said complaint, or of any part thereof.

These defendants deny and say that it is not true that on the 15th day of April, A. D. 1868, or at any other time whatever, they or either of them wrongfully or without color of title, or in any other manner, or against the will of said plaintiffs, entered into or upon said premises, or ousted or ejected or expelled said plaintiffs, or any one of them, from said premises, or from any part thereof.

And they, said defendants, deny that they yet do or ever have withheld or detained the possession of said premises, or of any part thereof, against the will of said plaintiffs, or that they exclude, or ever have excluded, said plaintiffs therefrom.

7 And defendants deny that on the 15th day of April, A. D. 1868, or at any other time, said plaintiffs demanded the possession of said premises from said defendants, or that they refused to surrender or deliver the same.

Further answering, these defendants aver that they are the legal owners in fee of the premises described in said complaint, and have so held and owned the same as such owners for more than three years last past.

Further answering, these defendants aver and show that said plaintiffs ought not to have or maintain this their said action against these said defendants, because they say that the said plaintiffs nor their ancestors, nor predecessors, nor grantors, were not, nor were any one of them, seized or possessed of the premises described in said complaint at any time within five years next before the commencement of this said action.

Further answering, these defendants say that they and their grantors, and the persons whose title they hold, were seized and possessed of said premises in said complaint described for more than five years, to wit, ten years consecutively next before the institution and commencement of this said action; and that these defendants, and those whose title they hold, have actually held, possessed, and enjoyed said premises, and the whole and exclusive possession thereof, adversely to said plaintiffs and to the whole world, during all of said time, to wit, said ten years.

8 Further answering, these defendants aver that the premises described in said complaint consist of one parcel and tract of land; and that these defendants, and those under whom they claim, en-

tered into the exclusive possession thereof under claim of title exclusive of any other right which said claim was founded on, and was, and consisted of, a written deed of conveyance of the said premises, and of every part thereof, and that they have continuously occupied and possessed said premises so included in said instrument, under said claim, for more than five years continuously next before the institution of this said action.

Wherefore, said defendants pray judgment that said action be dismissed, and that plaintiffs take nothing thereby, and that they, said defendants, have judgment for their costs in this behalf expended.

J. A. MOULTRIE and
FRS. E. SPENCER,
Attys. for Defts. Francisco and Teresa Casanova.

Duly verified. Filed April 21st, 1868.

JNO. B. HEWSON, *Clerk.*

8½ *Findings—Filed Nov. 3d*, 1871.

[Title of court and cause.]

The above-entitled cause coming on for trial as to the defendant therein, Teresa Casanova, the same having been previously disposed of as to the other defendants, the parties waived their right to a jury, and the trial was had before the court without a jury.

Having heard the evidence and arguments of the parties, the court finds as follows:

First. That, on the 17th day of December, 1845, Felix Buelna was alcalde of the pueblo de San José, and, as such, granted and conveyed in fee to Bicenta Padia, lot of land in said pueblo fifty varas in front and one hundred varas in depth, and on that day measured the same, and delivered to said Padia the possession thereof, and that said Padia shortly afterwards and within one year thereafter enclosed said lot with a fence, and lived upon and cultivated the same.

Second. That afterwards, and before the commencement of this action, said Bicente Padia sold and conveyed said lot of land to defendant, Teresa Casanova, and that she is now and was at the time of the commencement of this action, and ever since has been, the owner in fee thereof.

Third. That said lot so granted and conveyed to said Padia is situated in the city of San José, within the boundaries named in the complaint herein, immediately south of the lot known as the Ceseña lot, and formerly known as the Buelna lot, and latterly occupied by Meserve, fronting on the old Monterey road fifty varas, and extending back one hundred varas westerly.

Fourth. That at the time of the commencement of this action, defendant Teresa Casanova, with her husband, Francisco Casanova, (now deceased,) was in possession of said lot of land granted and delivered to said Padia, but not of any other part of the premises described in the complaint of plaintiff.

Fifth. That the present city of San José is the former pueblo de San José; that the title of said city to the lands within her boundaries, claimed under grant from the Spanish government, has been finally confirmed to said city by the courts and authorities of the United States.

8¾ Sixth. That defendant Teresa Casanova is now, and was at

the commen't of this action, the owner in fee of the said lot of land granted to Padia and located as aforesaid, and that the plaintiffs are not and never were the owners, nor was any one of them the owner thereof or any part thereof.

The court finds, as conclusions of law, that plaintiffs are not entitled to judgment against defendant Teresa Casanova for the premises sued for, or any part thereof, and that said defendant Teresa Casanova is entitled to judgment against plaintiffs for her costs, and that she is the owner of said premises occupied by her as above described.

For which judgment is ordered accordingly.

S. B. McKEE,
District Judge.

9 *Copy judgment for defendant Teresa Casanova.*

[Title of court and cause.]

January term, A. D. 1871.

This cause came on regularly for trial, J. Alexr. Yoell and S. O. Houghton, esqs., appearing as counsel for the plaintiffs, and Lawrence Archer, esq., for the defendant, Teresa Casanova, to whom was granted a new trial. A trial by jury having been expressly waived by the counsel for the respective parties, the cause was tried before the court, sitting without a jury; whereupon witnesses on the part of the plaintiffs and defendants were sworn and examined, and the evidence being closed, the cause was submitted to the court for consideration and decision, and by the court taken under advisement; and now, after due deliberation thereon, the court delivers its finding and decision in writing, which is filed, and orders that judgment be entered in accordance therewith.

Wherefore, by reason of the law and the finding aforesaid, it is ordered, adjudged, and decreed that the defendant, Teresa Casanova, is now, and was at the time of the commencement of this action, the owner in fee, and entitled to the possession of all that part of the premises described in the complaint herein, (which is situated in the city of San José, and county of Santa Clara,) which is in the possession
10 of said defendant and described as follows: Lying and being immediately south of the lot of land known as the Ceseña or Buelna lot, and occupied at the time of the commencement of this action by Charles Meserve, fronting 50 varas on the old Monterey road, and running back westerly one hundred varas.

It is further ordered, adjudged, and decreed that said defendant, Teresa Casanova, have and recover from Maria Romie, Paul Romie, Charles Romie, Ernest Romie, and Mary C. Jacks and her husband, David Jacks, the plaintiffs in this action, her costs and disbursements incurred in this action, amounting to the sum of $, and that plaintiffs' action be dismissed as to this defendant, Teresa Casanova.

Judgment rendered November 3d, A. D. 1871.

JNO. M. LITTLEFIELD, *Clerk*,
By LEO. WATKINS, *Deputy Clerk.*

Clerk's office of the district court of the third judicial district in and for Santa Clara County, ss:

I, John M. Littlefield, clerk of the said court, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled cause.

Attest my hand and seal of said court this third day of November, A. D. 1871.

[SEAL.] JOHN M. LITTLEFIELD, *Clerk*,
By LEO. WATKINS, *Deputy Clerk*.

11 *Plaintiff's statement on motion for a new trial.*

[Title of court and cause.]

This action was heretofore tried and decided in favor of the plaintiffs, and against all the defendants. Afterwards the defendant Francisco Casanova died; afterwards a new trial was granted as to the defendant, Teresa Casanova, the surviving wife of said Francisco, and at the January term of this court for 1871, said action came on again for trial as against the said defendant, Teresa Casanova, and was tried before the court without a jury.

To maintain the issues on their part, the plaintiffs introduced and read in evidence a grant made by John Burton, alcalde of the pueblo of San José, to Felix Buelna; also a deed from Felix Buelna to John Frederick Rom*ei*, for the same premises described in said grant, from Burton to Buelna; also a grant made by said Burton, alcalde, to said Rom*ei*.

It was admitted by the parties that all the signatures to the said documents were genuine, and that John Burton was alcalde of the pueblo of San José at the date of said grants, and that he signed them as such alcalde.

All the said documents were written on the same sheet of paper,
12 and bore the same date, to wit, the 14th day of August, 1847, and are in the words and figures following, to wit:

Jusgada del pueblo de San José de Gde.

Whereas, Felix Buelna, a citizen of the pueblo de San José de Gde., has applied to this office for a building-lot adjoining to the Canoas, and said lot being vacant, this, therefore, is to certify that I, John Burton, first alcalde of the pueblo de San José de Gde., on the part of said pueblo, for and in consideration of the sum of what is specified by law, receipt whereof is hereby fully *and* acknowledged, h*ath* bargained, sold, and conveyed unto the said Felis Buelna, and to his heirs and assigns forever, a tract or messuage of land, lying and being in the pueblo de San José de Gde., on the south end of said town, being bounded northeast by the road to Monterey, northwest by the lot of Francisco Sesena, and by the water on the rear, and containing seventy-five varas in front, and running back on the south line one hundred and fifty varas. To have and to hold the same, with all the rights and privileges thereunto belonging, conditioned that the same be fenced or a building erected thereon, on or before the expiration of twelve months from the date of this instrument.

13 In witness whereof I have hereunto affixed my hand and seal this 14th day of August, A. D. one thousand eight hundred and forty-seven.

JOHN BURTON.

I, Felis Buelna, for and in consideration of the sum of eighty-five dollars, to me in hand paid by John Frederick Romie, receipt whereof is hereby fully confessed and acknowledged, h*ath* bargained, sold, and conveyed unto the said John Frederick Romie, and to his heirs and

assigns forever, a messuage or tract of land lying and being in the pueblo de San José de Gde., and known to be near the Canoas, and fully described in the within deed.

In witness whereof I have hereunto set my hand and seal in behalf of my heirs and assigns, this 14th day of August, A. D. 1847, in presence of the alcalde and assisting witness.

FELIS BUELNO.

Testigos:
CARLOS GLEIN.
CHAS. WHITE, *Clk.*

JOHN BURTON, *Alcalde.*

Jusgada del pueblo de San José de Gde.

Whereas John Frederick Romie has applied to this office for a building-lot, being in front of a lot sold to Felis Buelna, and bounding on the base-line made by James D. Hutton, esq., and said lot being vacant:

14 This, therefore, is to certify that I, John Burton, first alcalde of the pueblo de San José de Gde., on the grant of said pueblo, for and in consideration of the sum of what is specified by law, receipt whereof is hereby fully confessed and acknowledged, hath bargained, sold, and conveyed unto the said John Frederick Romie, to his heirs and assigns forever, a tract of land in the aforesaid pueblo, on the south end of said town, and being bounded in front by the base-line run by James D. Hutton, esq., and extending from said line to the rear to a lot granted to Felis Buelna, and being seventy-five varas in front, and having forty-eight varas in depth on the south line. To have and to hold the same, with all the rights and privileges thereunto belonging, conditioned and provided that the said John Frederick Romie will fence said lot with redwood fence, or erect a dwelling thereon, on or before the expiration of twelve months from this date.

In witness whereof I have hereunto set my hand and seal this fourteenth day of August, A. D. one thousand eight hundred and forty-seven.

JOHN BURTON, *Alcalde.*

It was admitted by the grantees that all the land described in the said grants and deed were within and formed part of the pueblo

15 lands of the pueblo of San José, and that the mayor and common council of the city of San José had, on the 14th day of June, 1852, duly presented a claim for said lands to the board of commissioners to settle private land-claims in the State of California, petitioning for a confirmation of the same, and that afterwards the same were finally confirmed to them within less than five years before the commencement of this action.

It was then proved by Ernest Romie, a competent witness, duly sworn and examined on behalf of the plaintiff, that the said John Frederick Romie died intestate in the county of El Dorado, in this State, in the year 1849, and that the plaintiffs in this action are his widow and heirs at law.

It was then admitted by the parties that at the commencement of this action the defendants, Teresa Casanova, with her then husband, Francisco Casanova, were in possession of that part of the premises described in the complaint, which is shown and designated on the diagram presented and marked "Exhibit A," as "occupied by Casanova,"

and that she continued in possession with her said husband until his death, and since then she has continued in possession of the premises until the present time.

The plaintiffs then proved that the two grants given in evidence by them embraced all the lands claimed in this action, and the land
16 designated on the diagram marked "Exhibit A," as "occupied by Casanova," and all the land in possession of deft. Casanova, except a small piece lying between the present Monterey road and the base-line of the 500-acre lot or line of the old Monterey road, which is shown by the pencil-line marked "A. T. H.," on the diagram A.

The plaintiff then rested, and the defendant, Mrs. Casanova, by her counsel, L. Archer, esq., moved a nonsuit, and that the case be dismissed, on the ground that the suit was brought against Casanova and his wife, and process was served on both parties, and both answered. Since that time Casanova has died, and the suit has not been continued against his administrator, and it only rests now against his widow, and the proposition is this: That the husband and wife levied on the premises after the commencement of the action, and the husband having died, it is improper to make his widow a defendant in an action of ejectment; it should be his administrator. Then there is no possession shown by these defendants in this case. The court denies the motion, to which defendant excepted.

Defendant, Mrs. Casanova, by her atty., L. Archer, esq., offered in evidence a grant on page two of the first volume of the records.

Defendant then produced from the office of the county recorder,
17 book one of the records of grants of the former pueblo of San José, and gave in evidence a grant on page two, in said volume, made by Felis Buelna to Vicente Padilla, and in connection therewith two or three other grants preceding and following the one to Padilla, with the sole object, avowed at the time, of showing the genuineness of the grant to Padilla; which grant to Padilla is as follows, with the translation:

"Se le censede al beseno Bisente Padilla un solar de cen cuenta baras de frenle y sien de fondo siendo; este solar situado al sur de la casa del leno Feliz Buelna, y en este municipalalidad.

"Pueblo de San José de Guadalupe, Dec. 17th de 1845.

"FELIZ BUELNA."

TRANSLATION.

There is granted to the neighbor Bisente Padia, a lot of fifty varas front and a hundred deep, this lot being situated to the south of the house of the citizen Feliz Buelna, and in this municipality.

Pueblo de San José de Guadalupe, Dec. 17, 1845.

FELIZ BUELNA.

It was then admitted by the parties that Feliz Buelna was, at the time of making said grant, alcalde of said pueblo, and that his signature thereunto is genuine; that he signed the documen. as
18 such alcalde, and that said book was a genuine book of record of grants kept by the officers of said pueblo, made by them at the time of their dates. Said defendant then offered and read in evidence a deed from said Padillo, purporting to convey to her the premises in controversy, which deed bears date the 1st day of September, 1866.

Said defendant then offered in evidence a deed from the commissioners of the funded debt of the city of San José, purporting to convey premises, including the premises in controversy, which deed bears date

the day of , whereupon said defendant produced the following witnesses, who testified as follows:

VACINTE PADILLA called for defendant. Sworn. Examined by Mr. Archer, (through Francisco Casanueva.)

Q. Where do you live now?
A. In San José.
Q. Where did you live in the year 1845?
A. In my lot of land.
Q. In San José?
A. Yes, sir.
Q. Did you ever have a grant from Felix Buelna?
A. Yes, sir.
19 Q. Was Felix Buelna an officer at that time?
A. He was.
Q. State now, as well as you can remember, all that was done between you and Felix Buelna at the time of making that grant.
A. Nothing.
Q. Where was Felix Buelna at the time he made you the grant?
A. In San José.
Q. In what place in San José?
A. It was at the place where the Cesenas were living.
Q. Was the paper made by Felix Buelna?
A. He put it in his carriage [book?] and did no more.
Plaintiffs object to it as leading; objection overruled.
Q. Did he make the papers?
A. Yes, sir.
Q. Where is the land that Felix Buelna gave or granted you?
Question objected to, parole evidence not being admissible to locate land.
The court said that the witness could testify as to the boundary-lines, and plaintiffs excepted.
Q. Was the land granted to you by Felix Buelna marked or measured by any person?
Plaintiffs object to the question, which was varied as follows:
20 Q. Did Felix Buelna, at or about the time of making this grant, mark out any special piece of land?
A. Yes, sir.
Q. What was there, if anything, on the north of that piece of land at that time?
A. There was a small trail or road, leading to the mill.
Q. Did any person live immediately on the north side of that trail or road?
A. Nobody.
Q. Do you know where Felix Buelna lived at that time?
A. Yes, sir.
Q. Where?
A. In the land where the Cesenas lived.
Q. Do you know who occupies that land now?
A. An American is in possession of it, but I don't know his name.
Q. Is his name Charles Meserve?
A. I think so.
Q, Where was the land that Buelna marked off for you with reference to Buelna's lot at that time?
A. It was to the south of Buelna; it was joining the hind part of Buelna's house.

Q. Do you mean Buelna's house or Buelna's lot?

A. The lot.

21 Q. What did you do, if anything, on that lot after Buelna gave it to you, or measured it for you?

A. I built a shanty or hut of mustard bushes and straw.

Q. What else, if anything, did you do on the lot?

A. I fenced it, and raised some Chili pepper and onions.

Q. Did you live on it?

A. Yes, sir.

Q. How long did you continue on it?

A. Four or five months.

Q. How long after Buelna gave it to you before you built your house and fence?

A. About a month.

Q. Were you a married man at that time?

A. Yes, sir.

Q. How did it happen that you did not live there longer?

A. Because some boys destroyed my hut.

Q. Do you know where the Monterey road was at that time?

A. Yes, sir.

Q. Where was this lot that Buelna gave you, with reference to the Monterey road?

A. It was on the Monterey road.

Q. On which side of the Monterey road?

22 A. I don't know the name of the wind. It was towards the south.

The COURT. Q. Was it on the side where the sun rises, or the side where the sun sets?

A. It was where the sun rises, (sets?)

Q. Was the lot towards the canoes, or the other way?

A. It was towards canoes.

Q. How large was that lot; what front had it on the Monterey road, do you remember?

A. 50 by 100.

Q. 50 varas front on the Monterey road by 100 deep?

A. Yes, sir.

Q. Did this 100 varas run towards the river?

A. They ran towards the canoes.

Q. Was the land that you built the fence around the same piece of land that Buelna measured off to you?

A. Yes, sir.

Q. Do you know the alley-way that runs between Merseve's present lot and the lot occupied by Mrs. Casanova?

A. Yes, sir.

Q. Where was the line of your lot on this way, with reference to the alley-way?

A. It was opposite to Buelna's house.

23 Q. Have you examined that lot within the last few years, to see where your old lot was located?

A. I did.

Q. Who now occupies the ground that Felix Buelna delivered to you, and that you say you fenced?

A. Mrs. Casanova.

Cross-examination by Mr. Yoell:

Q. Where did you live at the time you say Felix Buelna made the grant to you?

A. At the house below.
Q. At whose house?
A. At Mrs. Francisco Pacheco's.
Q. Where?
A. In San José.
Q. Where in San José?
A. Where now a watchmaker is living.
Q. In what street?
A. I don't know the name of the street.
Q. How long had you been living there previous to the making of this concession to you?
A. Over a year.
Q. After this grant was made to you, how long did you reside in the house of Mrs. Pacheco?
A. After a month I went to the place.
Q. How long did you stay there, at the land granted to you?
A. Five months.
24 Q. In what month did you go there?
A. I don't know.
Q. What month did you leave there?
A. I don't recollect.
Q. If you don't know in what month you went there, or in what month you left, how do you know you were there five months?
A. Well—
Q. Did this Chili pepper and onions you planted ever ripen?
A. Yes, sir.
Q. Did you gather them?
A. Yes, sir.
Q. Did you irrigate the ground on which you planted this?
A. Yes, sir; the ditch came there; I watered them from the asequia.
Q. Where did the water of the asequia come from?
A. From the mountains.
Q. Was there any asequia there except that which came from the canoes?
A. Yes, sir; it was an asequia that came from the canoes that I watered these plants with.
Q. Where did Buelna commence to measure when he measured this lot off to you?
A. At the edge of the small road or alley.
Q. Which way did he go from there?
25 A. Towards the south.
Q. How far did he go south?
A. I don't remember the number of yards he went that way.
Q. Where did he go next?
A. Towards the canoes.
Q. Isn't the canoes, south of where Buelna lived, now occupied by Meserve?
A. They are south of Meserve's land, but not in front of the house.
Q. Of what house?
A. Charles Meserve's..
Q. How near the Monterey road did you have this plantation of onion and Chili pepper?
A. Towards the asequia or ditch.
Q. How far from the Monterey road?
A. Where the land ran.
Q. How far from the Monterey road?

A. They were some distance.
Q. Were they towards the river from Buelna's house?
A. They were on the line of Francisco Buelna.
Q. Were they towards the river?
A. Yes, sir.
Q. How do you know that Felix Buelna ever made a grant to you?
26 A. Because he marked the land to me.
Q. Is that the only way you know it?
A. Yes, sir.
Q. Are there any objects in that neighborhood existing now which existed when this grant was made to you?
A. Some stakes.
Q. What stakes?
A. Stakes in each corner.
Q. When did you see these stakes?
A. When Felix Buelna marked the land.
Q. What were these stakes made of?
A. Of willow.
Q. How long did they stay there?
A. About a month.
Q. Can you find any of these stakes now, or have you seen any of them since?
A. No, sir.
Q. You say you fenced the land which Buelna marked off to you?
A. Yes, sir.
Q. Where did you put this fence?
A. Towards the asequia or ditch.
Q. Did you put more than one fence?
A. Yes, sir.
Q. How many?
27 A. I fenced all the land I was going to cultivate.
Q. How large a pi'ce of land were you going to cultivate?
A. About one-half—a small piece.
Q. In what year was it that you cultivated this land?
A. I don't remember.
Q. Where was you during the Mitcheltoreno revolution?
A. I was here.
Q. How long did you stay here after the revolution commenced?
A. I lived here for a long time.
Q. Didn't you go to Los Angeles about that time?
A. I did not.
Q. How is it that you testified in the former trial of this case that you went to Los Angeles during the Mitcheltoreno revolution?
A. I think I did not go.
Q. Why did you tell us before that you did go?
(Objected to as assuming a fact not proved.
Mr. Houghton said that that was not the object.
Mr. Archer then said that the question was inadmissible and irrelevant.
28 Mr. Houghton said if a witness testified falsely before, his evidence now could not be relied on.)
Q. Did you not testify in the former trial of this case that you went to Los Angeles during the Mitcheltoreno revolution?
A. I don't recollect.
Q. During that revolution did you go to Los Angeles?

A. After the revolution was ended I went to Los Angeles.
Q. In what year did you go to Los Angeles?
A. I don't recollect.
Q. How long did you remain there?
A. One month.
Q. Where did you go from Los Angeles?
A. I came back here.
Q. After you came back here where did you live?
A. At the house of Señora Francisca.
Q. What Francisca?
A. Francisca Sepulveda.
Q. How long did you remain there?
A. I don't recollect.
Q. After these boys burned down your ramada, where did you live then?
A. At the house of Donna Francisco.
29 Q. How long did you continue to reside there?
A. Until I built a house.
Q. Where did you build a house?
A. At the Abra Abia.
Q. When did you go there?
A. After I left the house of Donna Francisco.
Q. How long was that after your ramada was burned down?
A. I don't recollect.
Q. Was this ramada which you made inside or outside of the fence which you build?
A. It was inside.
Q. How far was that ramada from the house of Felix Buelna?
A. I don't recollect.
Q. About how far?
A. About ten paces from the house of Felix Buelna.
Q. Which way did the house of Felix Buelna front—north, south, east or west?
A. Towards north and south.
Q. Which side was the front, north or south?
A. I don't know according to these winds; towards the Monterey road.
Q. Your lot was behind Felix Buelna's house?
A. Yes, sir.
30 Q. Towards the river?
A. Yes, sir.
Q. And it was there you had the ramada?
A. Yes, sir.
Q. Ten or fifteen steps distant from the house of Felix Buelna?
A. Yes, sir.
Q. Didn't you testify on the former trial of this case that you left your ramada because you were afraid the cattle would tear it down?
A. Yes, sir.
Q. Why do you say now that the boys tore it down, and that that was the cause of your leaving?
A. I thought the cattle had destroyed it, but some boys told me that the boys tore it down.
Q. Did the boys tell you that since the last trial?
A. I don't know. The boys told me afterwards.
Q. Did they tell you that since you testified before in this case?
A. Afterwards.

Q. Didn't you testify in the former trial of this case that after you left the ramada you went to live at the Narvaez Ranch?

A. I went to La Abra.

Q. Did you not testify at the former trial of this case that at the time Buelna made this grant you were living at his house?

31 A. No, sir.

Q. Did you not testify that after you left Buelna's that you went to live at your brother's at the Abra?

A. I did not say any such a thing.

Q. How does it happen that you never claimed this lot?

A. Because I didn't know whether it had been sold.

Q. How came you to sell it to Casanueva?

A. Because Buelna told me that it had been sold.

Q. When did Buelna tell you it had been sold?

A. When he advised me to claim it.

Q. When was that?

A. It was a long time ago.

Q. Don't you know that this land has been fenced and occupied by Americans?

A. I had my measurement there.

Q. Don't you know that this land was occupied and fenced by Americans long before Casanueva went to live there?

A. I was a poor man and could not reclaim it.

Q. Don't you know the fact that it was so occupied?

A. I knew well that it was occupied, but I did not feel disposed to claim it.

32 Q. Did not Casanueva come to you and propose to buy it from you after he got possession of it?

A. No, sir, he did not.

Q. You say you went to live on this land about the month after Buelna marked it off to you; that you made a house of straw and mustard?

A. Yes, sir; I made it of willow and mustard.

Q. Was that dry or green mustard?

A. Green.

Q. Was it long or tall?

A. It was long.

Q. If it had not been long it would not have been of any use in making a ramada?

A. No, sir.

FRANCESCA PACHACO DE SUPELVEDA, called for defendants, sworn.

Examined by Mr. Archer:

Q. Are you acquainted with Vicente Padilla?

A. Yes, sir.

Q. How long have you known him?

A. Since he was a little boy.

Q. Did Padilla marry a girl who was residing with you or living in your family?

A. Yes, sir.

Q. Do you know where Padilla lived?

33 A. Yes, sir.

Q. Where did he live first after he married?

A. For some time at my house, or a little while.

Q. Where did he live next after he left your house?

A. At a ramada he built in the piece of land joining Felix Buelna.
Q. Do you know now where that land is?
A. Yes, sir.
Q. What land is it?
A. It lays near the land of the Cesenas, near the small road or alley that goes to the mill.
Q. On which side of that small road?
A. Towards the south.
(It was agreed between the parties that the Buelna lot was the Cesena and Meserve lot.)
Q. Describe the house that Padilla built on this land.
A. I can't describe the house which he built.
Q. Did Padilla put any fencing on his lot?
A. He put some long willow rails—some posts on the land and some willow rails.
Q. Did Padilla cultivate the land, if you know?
A. He dug the ground with a hoe and put some Chili peppers and onions, but they did not amount to anything; they were badly planted and did not come to anything.
34 Q. How long did Padilla stay on that lot?
A. About four or five months.
Q. Do you know why he left the lot and house?
A. Yes, sir.
Q. Why?
A. Because I was afraid the Indians would come there, and I told Varques Pacheco to go there and take down the ramada that they might come away.
Q. Where did Padilla go to live when they left this house?
A. At my house.
Q. Do you know in what year, or about what year, it was that Padilla built this house and had this little cultivation?
A. I don't remember the year. After he went to Los Angeles and returned from there he went into possession of the land.
Q. Are you able now, on the ground there, to point out what lot it was that Vicente Padilla had when he had this little cultivation and built a house?
A. I don't know how the land is, but if no part has been taken I might be able to say.
Q. Were you at that time acquainted with the lot occupied by Felix Buelna?
35 A. First it was a lot of Suñol's, then of Joaquin Narvaez, then of Felix Buelna, and after that *that* of Vicente Padilla.
Q. On which side was the Vicente Padilla lot—in the direction of Monterey or San Francisco?
A. Towards Monterey.
Q. Next towards Monterey from the lot of Felix Buelna?
A. Yes, sir.
Q. Do you know the size, or about the size or extent, of the Vicente Padilla lot?
A. I know the size, but I can't state it in varas.
Q. Do you know where the Monterey road ran then?
A. Yes, sir.
Q. Did this lot front on the road to Monterey?
A. The lot was in front of the Monterey road, but the ramada was built a little behind.
Q. On which side of the Monterey road?

A. Towards the canoes.

Q. Do you remember that there was a fence—a willow fence—on the south line of Felix Buelna's lot?

A. No, sir.

Q. How do you know that the Vicente Padilla lot was the next lot south of the Felix Buelna lot?

A. Because I went over often to see the girl.

Q. Do you mean his wife?

36 A. Yes, sir; the wife of Vicente Padilla.

Cross-examination by Mr. Yoell:

Q. How far was this ramada or brush built by Padilla from the house of Felix Buelna?

A. There was an alley or small road between them.

Q. How many varas was it from the house of Buelna to the place where Padilla built the ramada?

A. It was wide enough to allow the passage of a cart.

Q. Was it not to the back of Buelna's house that the ramada was built?

A. It was a little way behind but near the house of Buelna.

Q. In what year was it that Padilla put this ramada there?

A. I can't tell the year, but it was three or four years before the Americans came here.

Redirect examination by Mr. Archer:

Q. Was there any fencing on Felix Buelna's lot?

37 (Mr. Houghton objected, on the ground that it was going into the main case again.

The court sustained the objection.)

CARLOS GULNAC called for defendants. Sworn.

Examined by Mr. Archer:

Q. How old are you?

A. Forty years old, about.

Q. Where did you live in the years 1845 and 1846?

A. Here in San José.

Q. Did you know Felix Buelna at that time?

A. Yes, sir.

Q. Did you know at that time where he lived?

A. Yes, sir.

Q. In what part of the towm is that lot situated?

A. It is situated towards the Monterey road.

Q. Who occupies that property now?

A. Charles Meserve.

Q. Who occupied it next after Buelna?

A. Francisco Cesena.

Q. Did your father, during those times, have a mill in that neighborhood?

A. Yes, sir; near by there.

Q. Did you know Vicente Padilla?

38 A. Yes, sir.

Q. Do you know where he lived about that time, say in 1846?

A. Yes, sir.

Q. Describe the lot on which he lived, if you can. Tell with reference to existing objects.

A. Not exactly; I can give some idea about it.

Q. Who occupies the place now?
A. At present it is occupied by Mrs. Casanueva.
Q. Do you remember whether there was a fence of any description on the southern line of the Buelna lot?
A. Yes, sir; there was.
Q. Was the house that Padilla lived in on the Buelna lot?
A. I don't know very well myself, but he lived a little way from Buelna.
Q. On which side of the Buelna lot or house did Padilla live?
A. Towards the mill.
Q. Was there a road or wagon-way, at that time, leading to the mill from the Monterey road?
A. Yes, sir; there was.
Q. Where was that road with reference to the present alley-way between Meserve's and where Mrs. Casanueva lives?
A. My father petitioned for that road for the mill.
39 Q. Where was the road that existed in 1845 and 1846, with reference to the present road? Was it in the same place or in a different place?
A. In the same place.
Q. Have you been living in and about San José ever since 1845?
A. Near San José.
Q. Have you or not been in the habit of passing by, seeing this property in a general way, all the time?
A. Yes, sir.
Q. On which side of that road, as it existed in 1845 and 1846, or about that time, did Padilla live?
A. I can't state about the wind, but going from here it is on the left-hand side.
Q. How long do you know of Padilla living at the place of which you have been speaking?
A. I saw him in the summer season living there, but I don't know how long.
Q. Was there a house of any description upon the premises?
A. There was a small brush hut.
Q. Was there any fencing at all?
A. There was a small willow fence with rails around.
Q. Was there any cultivation at all around there?
40 A. Very little cultivation; some plants.
Q. Do you happen to know why Padilla moved away from there?
A. No, sir.

Cross-examination by Mr. Yoell:

Q. You were only about fourteen years old in 1846?
A. About fourteen or fifteen.
Q. At that time you lived with your father here in town, in that house fronting on Market square?
A. Yes, sir.
Q. In what year did your father put his mill there?
A. About 1841 or 1842; I don't recollect positively.
Q. That mill was on the Guadalupe River?
A. No; that was not the name of the creek at that time.
Q. Where did the water come from that supplied that mill?
A. From another tank made by my father for the use of the mill.
Q. The stream that supplied that mill came from the Abra?
A. Yes, sir.

41 Q. The waters of the canoes came from the south—from the direction of Pedro Choboya?

A. Yes, sir.

Q. The waters of the canoes supplied the asequia with water?

A. Yes, sir.

Q. All the waters that came from Abra through the willows, supplied your father's mill?

A. Yes, sir.

Q. Your father's mill was south of the asequia?

A. Yes, sir.

Q. North of the canoes?

A. Yes, sir.

Q. And it was west of Felix Buelna's house? In the direction of where the sun sets?

A. Yes, sir.

MIGUEL FLORES called for defendant. Sworn.

Examined by Mr. Archer:

Q. Where do you live?

A. Here, in Market street.

Q. How long have you lived in San José?

A. About forty-five or forty-six years, more or less.

Q. How old are you?

42 A. About forty-five or forty-six years old.

Q. Do you know where Mrs. Casanueva lives, and the property which she now occupies?

A. Yes, sir.

Q. How long have you known that property?

A. I knew it from my boyhood.

Q. Who was the first person whom you ever knew to occupy it?

A. Vicente Padilla was the first person with whom I was acquainted who lived on the land near by Felix Buelna.

Q. Do you remember in what year Vicente Padilla lived there?

A. No, sir.

Q. More or less?

A. It is over twenty years since he lived there.

Q. Did he live there whilst Felix Buelna *a*ccupied the adjoining lot, or Cesena?

A. Felix Buelna.

Q. Do you know that Felix Buelna gave his lot to Cesena?

A. No, sir.

Q. What did Vicente Padilla do on this lot?

A. I can't say what Padilla did on the land. I saw a little brush hut there and Padilla living in it.

Q. Did you see any fencing on the land?

A. On the line adjoining Felix Buelna there was a kind of

43 a fence with rails around.

Q. Do you remember where the Monterey road ran at that time?

A. Yes, sir.

Q. Who lived next this way from Felix Buelna at that time?

A. At that time there lived on this side Joaquin Narvaez and Cepeda.

Q. Who lived next to Felix Buelna, on the other side?

A. Towards the south was a small brush hut, where Padilla lived.

Q. Did this house, or any of them, set up to the Monterey road or back from it?

A. The road ran this way; beyond that was the house of Buelna; behind that was the little brush hut.

A. What direction do you mean by behind; in what direction was Padilla's house from Buelna's house?

A. The house of Buelna was nearer the Monterey road, and the brush hut was beyond—behind the house.

Q. Do you know whether the Felix Buelna lot ran back from the Monterey road to the asequia?

(Plaintiff object' to it as leading.)

Q. Do you know the location of the asequia, as it ran by this place?

44 A. Yes, sir.

Q. Do you know whether the Felix Buelna lot extended to the asequia?

A. I don't know.

Cross-examination by Mr. Houghton:

Q. How often were you in the habit of going down to that neighborhood at the time you say this ramada was there?

A. Many times I used to go there hunting cattle.

Q. You lived a short distance from this court-house, in Market street?

A. No, sir.

Q. Where did you live?

A. I lived near by this court , but I had to go very often another way, where the cattle were.

Q. Was not your father's house a short distance from this court-house?

A. Yes, sir.

Q. And you lived with your father?

A. I did.

Q. How long did that ramada which you saw there remain?

A. I don't know.

45 Q. What time of the year was it that you saw it there?

A. In the summer season.

Q. What was it made of?

A. Of brush and mustard.

Q. Do you know whether that house was made of mustard or brush?

A. It was of mustard or brush, or one or the other.

Q. How far was this ramada from Buelna's house?

A. I can't tell the distance.

Mr. Archer offered in evidence the other grants in this first book of records, in connection with this grant to Don Juan Navaez, by Antonio Maria Pico, made February 12th, 1844, for the Narvaez tract of land.

Plaintiffs object to it as irrelevant, and the court overruled the objection, and plaintiffs excepted.

He next offered in evidence a grant to Antonio Suñol by A. M. Pico, dated August 21st, 1843.

Next, a grant by Pico, alcalde, to Felix Buelna, made in 1844, in February.

Plaintiffs object to it as irrelevant. Objection overruled and exception taken.

It is admitted that the deed from Padilla, under which the defendant claims, includes the land in controversy.

46 It is admitted that the deed from the commissioner of the funded debt includes the land in controversy.

Here the defendant rests.

Plaintiff's testimony in rebuttal.

GUADALUPE DON, called in rebuttal for plaintiff. Sworn.

Examined by Mr. Houghton:

Q. Did you know Felix Buela in 1845, and his family?
A. Yes, sir.
Q. Do you know where he lived in the southern part of San José?
A. Yes, sir.
Q. Did you know Vicente Padilla about that time?
A. Yes, sir.
Q. Did you know his wife?
A. Yes, sir.
Q. Do you remember where the lot upon which the house was that was occupied by Felix Buelna at that time?
A. Yes, sir.
Q. Do you know who occupied it after Felix Buelna left it?
47 A. Yes, sir.
Q. Who?
A. Francisca Cesena.
Q. Do you know anything about Vicente Padilla and his wife being or living anywhere near the house of Felix Buelna in 1845?
A. They never lived there.
Q. You never knew them to live there?
A. No, I never knew them to be there.
Q. Do you know of Buelna's wife being sick in the year 1845?
A. Yes, sir; she had a child.
Q. Who attended her at that time?
A. I was there five days.
(Defendants object and the court overrules the objection.)
Q. During the time that you were there at that time, did you see Padilla's wife?
A. After I left she went there to attend that family because she was paid for it.
Q. How long did she remain there attending on the wife of Felix Buelna?
A. That I don't know.
Q. Do you know in what house the wife of Padilla lived at the time she was attending the wife of Buelna?
A. She might have been living at his house.
48 Q. What part of the year 1845 was that?
A. I can't tell. I know that in 1845 she had that child.

FELIX BUELNA, recalled in rebuttal for plaintiff.

Examined by Mr. Houghton.

Q. Do you know where Vicente Padilla lived in 1845?
A. Here in San José.
Q. Where?
A. At the house of Juan Sepulveda.
Q. Upon whose land?
A. On Sepulveda's land, at his house.
Q. Did he ever live at any time at your house that year?
A. He was at my house.
Q. What was he doing there?
A. He was invited by me, or his wife was, to go and assist my wife.
Q. Do you know of any ramada built near your house?

A. No, sir.
Q. Did Padilla build a ramada near your house that year?
A. At what point?
Q. Anywhere in the neighborhood of your house.
49 A. No, sir, I did not see it.
Q. Did he build a ramada anywhere there?
A. I did not see it.
Q. Where did Padilla live during the time his wife was attending your wife?
A. In my house.
Q. Did he live in your house or in another structure near your house?
A. There was a hut or brush house that was a short distance from my house, that was built by me to the south of my house.
Q. Did Padilla ever at any time live anywhere in that vicinity?
A. The only place I saw him that year was at Sepulveda's place.
Q. You never saw him at any other place?
A. No, sir.
Q. How long did he live in this ramada of yours?
A. About two weeks.
Q. Where did he go from that?
A. He went to Sepulveda's house, where he had been before.
Q. At any time after 1845 did Padilla live in the vicinity of your house or in that neighborhood?
A. No, sir.
50 Q. Did he ever, to your knowledge, live on any lot south of your lot?
A. Ever since 1837 I lived in this town; from that time up to 1848 I have never seen Padilla live in that vicinity.
Q. Did you ever give Vicente Padilla possession of any lot adjoining the lot on which you lived in 1845, as alcalde of the city of San José?
A. Padilla presented a petition to me in 1845.
Q. I am not asking you anything about a petition; I am asking you about possession.
A. I never gave him possession, as I never measured the land.

Cross-examination by Mr. Archer:

Q. Do you state that you did not deliver possession of a lot to Vicente Padilla, lying south of your lot?
A. No, sir.
Q. Did you not make a grant, while you were alcalde, to Vicente Padilla, of the lot next south of your lot, in December, 1845?
A. I did make a grant, but I did not give possession, because I never measured the land; but that is not the lot to the south, but the second lot after the one south of my lot.
51 Q. Do you know Judge Moultrie?
A. No, sir.
Q. (Pointing to Moultrie.) This gentleman; did you ever see him before?
A. Yes, sir; I have seen him several times, but I don't remember where he lives.
Q. Do you know where Mrs. Casanueva now lives?
A. Yes, sir.
Q. Do you know the lot where she occupies?
A. Yes, sir.
Q. Did you ever go to that lot with this gentleman? (Mr. Moultrie
A. I don't remember that it was in company with him I went.

Q. Did you ever go there in company with Vicente Padilla?
A. Never.
Q. Can you state whether you did or not go with this gentleman? (Mr. Moultrie.)
A. I don't remember of ever having been there with that gentleman. You might make me remember; but never with Padilla.
Q. Didn't you and Vicente Padilla go with that gentleman (Mr. Moultrie) to that place where Mrs. Casanueva lives?
A. I never went there with Padilla.
52 Q. Do you remember whether you went with that gentleman?
A. I don't remember his face.
Q. Do you know Mr. Mathews?
A. Yes, sir.
Q. Did you go with him?
A. No, sir; never.
Q. Did you point out to Judge Moultrie, this gentleman, with Vicente Padilla, the boundaries of the lot you granted to Vicente Padilla?
A. Never.
Q. Did you not, upon the ground, point out to this gentleman, with Vicente Padilla, the lot that you granted to Vicente Padilla as being immediately south of the lot now occupied by Charles Meserve?
A. I never went there with Padilla. At that time they say Mr. Mathews went there I never went there. I have been there twice. One of those times was with Mr. Yoell, and the other time with Ernest Romie and Jacks. That is the first time I ever went to the ground to point out the boundaries.
Q. Did you not point out to this gentleman, (Mr. Moultrie,) in 1856, the lines of the Vicente Pardilla lot that you granted to him—show the property to him—locate it on the ground?
53 No, sir. I never went there any more since I went to show it, and in a few days I went again.
Q. When was it you went there to point it out to this gentleman? (Jacks.)
A. It was in February, 1869, I think.
Q. What time did you go to live on this lot that you sold to Cesena?
A. In 1844.
Q. That is the same property now occupied by Meserve?
A. Yes, sir.
Q. It extended down to the south side of the alley that runs——
(Plaintiffs object to the question as not cross-examination.
The court overruled the objection.)
A. At that time there was no alley; there was nothing but my fence.
Q. What time did you build a fence on your southern line?
A. In the same year, 1845.
Q. Where did that fence then extend with reference to the new roadway or alley?
A. It must have been a fence that now lies to the north.
Q. You say that fence was put up there in 1845?
A. I placed the fence myself. The fence in the front part of my
54 house does not go so far as now, because I had no land there.
Q. Didn't your fence extend to the Monterey road?
A. No, sir.
Q. How much did it lack?
A. Fifty varas, more or less.
Recess.

JOHN MURPHY, called, in rebuttal, for plaintiffs, sworn.

Examined by Mr. Houghton:

Q. State when you first came to San José?

A. It was in December, 1844.

Q. State, if you know, where the Francisco Cesena lot was, in the southern part of the town, occupied by Felix Buelna in 1844 and 1845?

A. I know where that lot is.

Q. Between the time you came here to San José, and 1847, was there any house or any cultivation of any sort south and to the south of the alley that ran from the Monterey road to the Gulnac mill?

A. I never saw any.

Q. If there had been any there, would you have known it?

A. Yes, sir; I think I would.

55 Q. Were you in the habit of passing there during that period?

A. Yes, sir.

Q. I believe your father lived south of that?

A. Yes, sir.

Q. You passed back and forth to your father's house?

A. Yes, sir.

Q. If there had been any house would you have noticed it?

A. There was no house there.

Q. Was there any cultivation; or, if so, would you have noticed it?

A. There was no cultivation. The canoes was a pond, and I used to go there in 1845 to bathe, and I heard of no cultivation about there.

Q. In the early part of 1846, were you as familiar with it as in 1845?

A. Yes, sir.

Q. And you saw no cultivation or any habitation south of the alley?

A. I never have seen any there.

Cross-examination by Mr. Archer:

Q. If I understand you, you went to this place called the canoes to bathe in 1845?

56 A. Yes, sir.

Q. In the winter of 1845 and 1846, I suppose you did not bathe there?

A. I was not living in town in the spring of 1846.

Q. If there had been any cultivation or improvements there from the first of 1846, or for five or six months, would you have seen them?

A. If there had been improvements there I should have seen them, because I passed by there.

Q. Didn't mustard-weeds grow up along the Monterey road?

A. Yes, sir.

Q. Have you any recollection of how far the house of Felix Buelna went back?

A. A very short distance.

Q. It was in view from the road?

A. Yes, sir; it was a few yards from the house to the road.

Q. Do you know whether, in 1845, there was a fence around the Buelna lot?

A. I would not be positive whether there was or not. There was some piece of land that had a light fence around it there alongside of the road, but I would not swear positively whether it was Buelna's lot or the lot on this way; there never was any fence. I don't recol-

57 lect what year it was they sold those lots, when there was fences put on where the Francesca Cesena lot is.

Q. In 1846 you lived in the country?
A. Yes, sir.
Q. How far from town?
A. About eighteen or nineteen miles.
Q. You came to the town how often?
A. We used to come in every Sunday. Sometimes not so often, and sometimes during the week.
Q. You had no occasion to pass that alley-way in 1846?
A. No, sir.

MIGUEL NARVAEZ called for plaintiff, in rebuttal. Sworn.

Examined by Mr. Houghton, through Joseph Garner, interpreter:

Q. Did you know where Felix Buelna lived in the pueblo of San José, in the year 1845?
A. Yes, sir.
Q. Do you know where Francisco Cesena lived afterwards?
A. He lived at the place where Felix Buelna lived.
Q. Felix Buelna's wife was your sister?
A. No, sir.
58 Q. Did you marry a sister of Felix Buelna?
A. Yes, sir.
Q. Did you know Vicente Padilla?
A. Yes, sir.
Q. Were you acquainted, in the years 1845 and 1846, with the lands and lots in the vicinity of the place where Felix Buelna lived in that year?
A. Yes, sir.
Q. Did Vicente Padilla live in that vicinity in either of those years?
A. In 1845 he lived for a few days at the house of Felix Buelna.
Q. After that, where did he go to live?
A. I don't know where he went after he left there.
Q. How far was the house that Padilla lived in, in which he passed these few days, from the adobe house where Felix Buelna lived?
A. It was close by—very near.
Q. About how many varas?
A. From the hut to the house where Felix lived was about ten varas.
Q. Which way was it from the house, south or north?
A. To the south.
Q. Do you know of the little road which went from the Monte-
59 rey road south from Buelna's house, south to Gulnac's mill?
A. No, sir. There was but one road which came from the ranch of Narvaez. That came within fifteen varas of the house of Felix Buelna.
Q. Was there any passage-way from the Monterey road, that you remember of, which went to Gulnac's mill?
A. There was no alley at that time.
Q. Was there any way by which people went into Gulnac's mill to the south of Buelna's house?
A. No, sir. The only way that we used to go was by crossing the small creek; and we went above about a mile. There was no alley-way at all there.
Q. In 1845 or 1846, did Vicente Padilla occupy or cultivate any land to the south of the lot of Felix Buelna?
A. Never. I never saw it.
Q. If he had cultivated there, what would have been your opportunity of knowing it?

A. I used to travel at that time very often to my ranch [Narvaez ranch] to San José and pass by it.

Q. Did you stop at Buelna's house frequently—your brother-in-law?

A. Yes, sir.

60 Cross-examination by Mr. Archer:

Q. Where did you live in the winter of 1845 and 1846, and during the year 1846?

A. At the ranch.

Q. How far from the pueblo of San José?

A. A little over three miles.

Q. Which way did the road run that you traveled over from your home to the pueblo?

A. I used to leave the Monterey road at one side.

Q. Did you travel on the Monterey road at all?

A. No, sir.

CORNELIO HERNANDEZ, called for the plaintiff, in rebuttal. Sworn.

Examined by Mr. Houghton:

Q. Did you ever live at Felix Bulena, in the southern part of the city?

A. Yes, sir; a very short time.

Q. In what year?

A. In 1845.

Q. Did you know Vicente Padilla at that time?

A. Yes, sir.

Q. Where was he living at that time?

61 A. I can't tell.

Q. Did you ever see Vicente Padilla and his wife at Felix Buelna's house?

A. No, sir; I came up here in the month of October, 1845.

Q. How long did you stay there?

A. About two months.

Q. From that time down to 1847, till after the Americans came, did you live in San José?

(Objected to as leading, and objection sustained.)

Q. Where did you live in 1846 and 1847?

A. I lived here most of the time.

Q. Did Vicente Padilla cultivate any land on the lot next south of Felix Buelna's lot, in either the year 1845, 1846, or 1847, to your knowledge?

A. No, sir.

Q. Would you have known it if he had so cultivated?

A. Yes, sir.

Cross-examination by Mr. Archer:

Q. Where did you live in 1845?

A. In the house of my father. During the sickness of my

62 father and mother I used to go every day to the house of Felix Buelna—almost every day.

Q. Didn't you say you came to San José in 1845?

A. Yes, sir.

Q. Where did you come from?

A. I came from Anzar's ranch, at San Juan. I manufactured a quantity of soap.

Q. Didn't you say you staid here three months?

A. Yes, sir; since 1839 till 1845. I got through with a contract I had to make that soap, and I left there and came over here.

Q. Didn't you stay at the pueblo three months?
A. Yes, sir.
Q. Where did you go then?
A. From here I went to Augustine Bernal's.
Q. When you went to Livermore's ranch how long did you stay?
A. A very short time—one or two months. I immediately came back.
Q. Is it not a fact that you don't know where you lived after that?
A. I have said that I lived here most of my life; but as my profession required, I had to go out and work at the ranches.
Q. When you were at Livermore's what did you do?
63 A. I manufactured soap.
Q. When you went to Bernal's, what did you do?
A. I manufactured soap.
Q. Can you say that you were in the pueblo of San José in the month of January, 1846?
A. Yes, sir.
Q. How do you know it?
A. Because at that time of the year I could not work on his place where I used to manufacture soap, because it had no roof on it. I lived here in the house that I always recognized as my place of residence.
Q. In the spring of 1846, what time did you go out to work?
A. I generally used to go out in April or May.
Q. Didn't you do so in 1846?
A. I believe I did.
Q. Where did you go?
A. When I used to live here, I used either to go to the Positos or Augustine rancho.
Q. Didn't you always go where you had any work to do?
A. No, sir.
Q. Why didn't you?
A. Because sometimes I used to be busy here, either planting plants or fishing, and pruning also.

64 JOHN COLLAGHAN called for plaintiff, in rebuttal. Sworn.

Examined by Mr. Houghton:

Q. Do you know where the old Gulnac mill used to stand?
A. I know what was known as the Gulnac mill in 1852.
Q. (Showing.) Look at that map and see if you can locate approximately where it was.
(The witness does so.)
A. Relatively it is east, (showing on the map,) about two hundred feet or a little more north of east. The line of the present alley, which runs south of Meserve, would intersect the arroyo de canoes.
The COURT. Q. You are speaking of the alley-way on that diagram?
A. I am speaking of it as at present on the ground.

Cross-examination by Mr. Archer:

Q. Is not that now like the road that leads down to where the mill formerly stood, or was, till some streets were opened on this side?
A. Yes, sir, it was.
65 Q. There was a little pond in to the right?
A. Yes, sir; at the asequia.

By Mr. Houghton:

Q. It bent off to the northwest?
A. Yes, sir.

Q. If it continued on its course, in a direct line, it would have struck the mill two hundred feet south of the mill?
A. Yes, sir.

HARRY BEE called for plaintiff, in rebuttal. Sworn.

Examined by Mr. Houghton:

Q. Where did you reside in 1845, 1846, and 1847?
A. In the pueblo of San José de Guadalupe.
Q. Did you know Felix Buelna?
A. Yes, sir.
Q. Did you know Vicente Padilla?
A. Yes, sir.
Q. Did you know him at that time?
A. Yes, sir.
Q. Did you know where Felix Buelna lived in the southern part of the town?
A. Yes, sir.
Q. Did you know canoes and the pond?
66 A. Yes, sir.
Q. And the stream from it?
A. Yes, sir.
Q. Did you know where the asequia was?
A. Yes, sir.
Q. That came from the canoes pond?
A. Yes, sir.
Q. Did you know where Gulnac's mill was?
A. Yes, sir.
Q. Did you know where Vicente Padilla lived in 1845, 1846, and 1847?
A. Yes, sir.
Q. Where?
A. He lived along with the family of the Sepulvedas.
Q. In 1845 and 1846?
A. Yes, sir.
Q. Do you know what portion of this year he lived with the Sepulveda family?
A. His wife and family lived there. They lived within fifty varas of me at that time.
Q. In both of those years?
A. Yes, sir; he cultivated with this Sepulveda family.
Q. In 1845 and 1846?
A. Yes, sir.
67 Q. Upon what premises was it?
A. On the Los Gatos Creek.
Q. Whose land was he cultivating on?
A. believe it was known then as the——
Q. (Interrupting.) Abra?
A. No. I have seen him cultivate there, too.
Q. What was the name?
A. Galinda farm, which was on the west side of the Los Gatos Creek.
Q. I am enquiring about Padilla.
A. He was then cultivating with the Sepulveda family, on the west side of the Los Gatos Creek.
Q. Was it this family of which Francisco Pacheco was a member?
A. Yes, sir.
Q. Did you know of Padilla cultivating any land to the south of the alley-way that is now there?

A. No, sir.
Q. Could he have done so in those years without your knowing it?
A. I think I should have known it if either he or anybody else had cultivated.
Q. Did anybody cultivate?
A. No, sir.
Q. Was there any cultivation south of the Buelna lot?
A. No, sir.

68 Cross-examination by Mr. Archer:

Q. What time did you come here?
A. In 1833.
Q. How old were you then?
A. About twenty-four years old.
Q. Did you come to this pueblo in 1833?
A. Yes, sir.
Q. When did you marry in this country?
A. In 1838.
Q. You were engaged yourself in cultivating even off outside of San José?
A. No, sir; my father-in-law was there. I cultiveted nowhere except in the susal.
Q. When were you engaged in cultivating there?
A. In 1850 I think I was.
Q. Were you not before that?
A. I never cultivated anywhere in this valley until 1850.
Q. When was it you lived on the Chaboya land?
A. What Chaboya?
Q. When was it your father-in-law lived on the Chaboya rancho?
A. I never knew him to cultivate there.

69 Q. When did he live over there?
A. I never knew him to cultivate there.
Q. You were never over there on the Chaboya lands?
A. Yes, sir.
Q. On the Palo rancho?
A. Yes, sir. That was in 1835.
Q. Was it 1835 or 1845?
A. 1835 or 1836.
Q. It was not 1844 or 1845?
A. No, sir; in 1844 I was in Monte Diablo.
Q. Where were you in 1846?
A. Here in this place.
Q. Where were you in 1845?
A. I came here then.
Q. Had you no business with Vicente Padilla in 1846?
A. No, sir; I never had any business with him.
Q. Vicente Padilla married an Indian girl?
A. Yes, sir.
Q. Did you take any particular notice of where Padilla lived, or what he was doing from day to day, or week to week, or month to month?
A. No, sir.
Q. You had no occasion to do so?
A. No, sir.

70 Q. You had no business with him?
A. No, sir.
Q. In what part of this pueblo did you live in 1846?

A. On the west side of the plaza, in the same house where I was shot.

Q. How far from the Buelna lot is that?

A. It is about eight hundred or nine hundred yards, or more.

Q. Was there anything to call your attention to that portion of the country that lay south of the Buelna lot?

A. There was.

Q. What was it?

A. I asked for that same lot in 1845.

Q. What time in 1845?

A. About the fall.

Q. Why didn't you get it?

A. Because they would not allow me to build on the other side. They would give me a lot on the west side. They would not grant me in behind Buelna's. I plowed up that same land about fourteen years ago for Mrs. Donelson.

Q. You say you applied for this lot in the fall of 1845?

A. Yes, sir.

Q. And you did not get?

71 A. No, sir.

Q. Had you any interest in keeping your eye on that lot afterwards?

A. I kept it in mind.

Q. In the year 1846 had you any special business with that lot?

A. No, sir.

Q. You had no occasion to have?

A. No, sir.

Q. You had no special occasion to be in that part of the town?

A. No, sir.

Redirect examination by Mr. Houghton:

Q. At what time do onions and Chili peppers mature in this country, what season of the year?

A. I expect about June or July. Peppers are later, according to what time you sow them.

Q. What time in the year is mustard large enough to build a ramada of? Is it large enough in the month of January?

A. No, sir.

Q. What is its condition then?

A. It is winter season, and wet.

Q. Is it large or small in its growth?

72 A. It must have plenty of rain to have any h'ight at all. It would not be more than four or five inches high in January.

Q. You say that you made application for the lot and it was refused you?

A. Because I understood that that was the limits.

Q. Who gave you to understand that?

A. I believe Felix Buelna; and they granted me a lot on the other side—on the west side of the Monterey road—on the west side, where First street is now—where the foundry is now.

Recross-examination by Mr. Archer:

Q. Are not some seasons earlier here than others?

A. Yes, sir.

Q. In the month of January the mustard is higher some years than it is others?

A. I have seen grass eight or six inches high.

Mr. Yoell:

Q. But you never saw mustard five feet high?
A. No, sir.

VICENTE JUAREZ recalled. Examined by Mr. Houghton:

Q. Do you know a place called Las Canoes, near San José?
73 A. Yes.
Q. Do you know anything about anybody having a matanza at the canoes in 1845 or 1846?
A. No, sir.
Q. Or near that?
A. No, sir.
Q. Did you ever do any work about there?
A. Yes, sir.
Q. For whom?
A. For lassoing cattle.
Q. For whom?
A. Salvio Pacheco.
Q. Do you know where Buelna lived in 1845 or 1846?
A. Yes, sir.
Q. Was that matanza carried on there during those years?
A. In 1845 there was no matanza.
Q. In 1846, was there?
A. No, sir.
Q. When was it there?
A. It was about the year 1840.
Q. Did you know Vicente Padilla in the years 1845 and 1846?
A. Yes, sir.
Q. In either of those years did he live anywhere in the vicinity of the canoes?
74 A. Yes, sir.
Q. Whereabouts?
A. He lived inside of the fence of Felix Buelna.

Cross-examined by Mr. Archer:

Q. How long did he live there?
A. That I could not say; whether he lived there 15 or 20 days.
Q. Do you know whether he lived there more than that?
A. No, sir.
Q. Was Felix Buelna's lot inclosed at that time?
A. Yes, sir.
Q. Did you know where Vicente Padilla lived after he left Felix Buelna's house?
A. No, sir.

(Mr. Delmas was asked if the translation of a certain document, being a grant from Buelna to Vicente Padilla, which was shown to him, was a correct translation of it from the Spanish, to which he answered, "Yes.")

CHARLES T. HEALY, called for plaintiff in rebuttal, sworn.

Examined by Mr. Houghton:

Q. Do you know the location of the house of Felix Buelna?
75 A. I do, as pointed out to me by the witnesses who have testified in this case.
Q. Applying that description to that house, where would that lot be located?

A. On the lot marked on this diagram as the Ceseña lot. The description is somewhat vague; it gives no point of the compass. If I located it at all, I should assume that the house would be on the northern line or northern boundary, and extend the fifty varas to the south of the house, and fifty varas eastern and western, which would cover substantially the lot marked "Ceseña lot" on this map.

Q. Are you an expert in locating grants from descriptive calls; have you had experience in that matter?

A. Yes, sir.

Q. During what period of time?

A. For some fifteen years.

Q. Is there any locative call other than the house of Buelna?

A. No, sir.

Q. Leaving out of the consideration the house of Buelna, would it be possible to locate that land described there?

A. No, sir.

76 Q. Did you measure the distance from Buelna's house to the south line of the present alley-way?

A. Yes, sir.

Q. What is the distance?

Q. One hundred and forty feet. It is only two and one-half feet over the fifty varas.

Cross-examination by Mr. Archer:

Q. Do the words, "to the south of the house of the citizen Felix Buelna" necessarily mean that the property is bounded by the house, according to your understanding of language?

A. Yes, sir; I should necessarily assume that to be the fact.

Q. Then, as I understand the English language, anything south of the place necessarily joined it.

A. In the case of the description, as I said before, we should have to assume that the house would be the northern line; otherwise it would be floating description.

Q. Do you mean to say that you are skilled in determining instrument, but not as a lawyer?

A. No, sir.

Q. Your experience is your claim to be a surveyor?

A. Yes, sir.

77 Q. Do you understand that the word house necessarily means commonly a particular building?

A. I should so understand it in matters of the descriptions of lands.

Q. If you should be instructed some time or other that it applies to the lot on which the house stands, it would be new to you?

A. Yes, sir.

Q. Then your location would be different of lots?

A. Yes, sir.

Q. If it should be true that the word house might be applied to the lot on which a structure stands, and if it should be true, also, that there was a fence run along the alley here, inclosing it, then where would you locate this lot? If the word house indicated the lot of Felix Buelna, where would you locate it?

A. I should mark it on the lot marked "Casanueva" on this diagram.

Q. If you should assume, fu'ther, that there was a road ran along a little to the east of Felix Buelna's house, and likewise here, would or would not the expression, fifty varas front, imply and bear some relation to that road? In other words, would you not consider that, the lot hav-

ing front and depth, if there was a road in that neighborhood, that the frontage would be on that road?

78 A. Yes, sir,

Q. That being the case, you would locate the lot as on the Monterey road, and immediately south of the Buelna property?

A. Yes, sir.

Redirect examination by Mr. Houghton:

Q. Is not that grant of Padilla sufficient of itself to locate that lot?

(Objected to on the ground that it is a question of law.)

Q. If you reject the word house, would you have anything to locate by?

A. I would not.

Q. Would there be anything to restrict you from going any distance south of the lot?

A. No, sir.

Q. Could you not, by going south of the lot, locate anywhere within a thousand yards, if you were to adopt the lot south of the house?

A. It would be floating, as I stated before.

Q. Assuming that, at the time that this was made, *that* there was an alley-way there and also the Monterey road, would not the word front apply to either of them?

A. It would.

79 WESLEY SMITH, called for plaintiff in rebuttal, sworn.

Examined by Mr. Houghton:

(Diagram Exhibit A and the translation of the grant from Buelna to Padilla shown to the witness.)

Q. Will you read the description in that diagram?

(The witness did so.)

Q. State what your occupation is.

A. A surveyor.

Q. How long have you been engaged in that business?

A. Twelve or thirteen years.

Q. Have you had any experience in locating on the ground descriptive calls of instruments, such as grants and deeds?

A. I have.

Q. Are you skilled in that matter?

A. I have made a good many locations of ranches and grants.

Q. Are you skilled in that matter?

A. I consider myself competent to do so.

Q. Are you acquainted with the premises described in that diagram?

A. I am.

80 Q. I refer you to the point marked there as Felix Buelna's house; where would that lot, described in that grant to Padilla, be located with reference to that house?

A. I would locate it next south of the house joining Felix Buelna.

Q. On what tract of land would that locate it?

A. On part of the Ceseña lot and the alley-way.

Q. Leaving the house out of consideration, could you locate that?

A. I could not.

Q. Would there be anything to guide you, leaving the house out of consideration?

A. There is nothing in the description by which I could locate it, leaving the house out.

Cross-examination by Mr. Archer:

Q. Did I understand you to say that you have had occasion to locate property, described in old Spanish papers, frequently?

A. I have.

Q. You have found it necessary, generally, to go on the ground and look at the objects presented there, and most frequently to hear testimony of witnesses in regard to locating them?

81 A. Frequently the calls of the grant require to take the testimony of witnesses.

Q. As a general thing, the calls are imperfect and uncertain until explained by testimony of witnesses who are cognizant of the grant?

A. Yes, sir.

Q. Isn't it a rule with you to give such an interpretation of the grant as will enable you to locate the granted premises, but not on property of other persons?

A. Yes, sir.

Q. That is one of the rules that govern you?

A. Yes, sir.

Q. Assuming that the Monterey road run along near the house of Buelna as laid down, and assuming that the word house of Felix Buelna is broad enough to embrace the building-lot, then where would you locate this building-grant?

A. I would locate next adjoining lot next south of the Buelna lot.

Q. The fifty varas ran along the Monterey road one hundred varas back?

A. Yes, sir.

Redirect examination by Mr. Houghton:

Q. Would you be justified in rejecting the word house and putting the word lot?

82 (Objected to and objection sustained. Exception taken.)

Q. Could you locate it after rejecting the word house?

A. If I rejected the word house and adopted the word lot, I should locate on the lot next.

Q. Would you not be justified in locating it anywhere south—five hundred yards south—and still satisfy this call?

A. Yes, sir.

Q. Would you not necessarily locate adjoining?

A. As an expert, I should have located it next to the lot.

Q. Reject the word house, it would leave the grant uncertain?

A. No more uncertain than now. On the same principle, I should locate it next to the lot.

Q. Reject the word house?

A. It would be floating.

It is admitted that A. T. Herman, who made this survey, and A. H. Parker, would give the same testimony as the two previous witnesses.

Here the plaintiffs rest.

J. A. MOULTRIE, called for defendants in rebuttal, sworn.

83 Examined by Mr. Archer:

Q. Are you acquainted with Felix Buelna and Vincente Padilla?

A. Yes, sir; I am.

Q. Were you present when each of the witnesses were examined in this case?

A. I was present when they were on the witness-stand. (A.) I heard small portions of the testimony of Buelna.

Q. Are you acquainted with the premises in controversy in this suit, and where Mrs. Casanueva now lives or occupies?

A. I am.

Q. State if Felix Buelna went with you to these premises at any time and pointed the lines out; and if he did so, who was present, what he did, and what was said in relation to the matter of pointing out the lines of the grant made by him to Vicente Padilla?

(Objected to by the plaintiff, that the defendant made Buelna their witness, and that therefore they could not now seek to invalidate his testimony as against the plaintiff. The defendant had gone entirely beyond cross-examination, and therefore ought not now to be permitted to discredit him.)

The court said that if any wrong had been committed in
84 the cross-examination of Buelna by Archer, it was admissible, and overruled the objection; to which ruling plaintiff excepted.

The WITNESS. A. In the spring of 1865 I was attorney for Padilla, and was employed for the purpose of recovering possession of that lot—Mr. Mathews and myself. We had considerable difficulty in ascertaining where it was. It was claimed to be upon a field in the possession of James Thomas. I went out with Vicente Padilla two or three times about it. Mrs. Thomas said if Mr. Houghton said so she would deliver up possession of the lot. I never went out with Mr. Houghton about it. I went out with Mr. Mathews to see Buelna. Vicente Padilla came into the office with Buelna; said he was there and would come out the next evening and point out the lot. Padilla and myself went out on the ground. I don't know whether Mr. Matthews was there or not. Mr. Buelna went out to look for the willow tree. We staid for an hour or so. I think Mr. Fuller, deceased, county surveyor, was along. Buelna went on the land, and told me and showed me where his old house stood, where Padilla's house was, and pointed out the lines, and made marks on the fence where the old Monterey road ran, some thirty varas south of where it now runs. He marked on the fence where the lower
85 road ran. I marked the fence with a hatchet. Buelna showed me where the claim lies. He said that that was the lot which he had granted to Padilla. I did not speak Spanish very well, but I understood it well enough for the purpose of that enquiry. I came back to town and paid Mr. Buelna to go home to Mayfield. Thomas consented to take possession of the lot and gave possession of it to Casanueva.

Q. I understand you to state that Buelna went out with you and pointed out to you those lots you have spoken of and his line, and where Vicente Padilla's house stood?

A. Yes; Buelna, Vicente, and myself went. He pointed out where Vicente's house stood.

(Mr. Yoell here interrupted.

Mr. Archer withdrew that question and struck out the answer.)

Q. Are you certain that Buelna is the individual who went with you, and that Vicente Padilla is the one who went with you?

A. Yes, sir; he is the person who pointed out Vicente's lot and where the house was.

Q. And where Vicente Padilla's house was on that lot?

(Objected to as leading.)

86 Cross-examination by Mr. Houghton:

Q. I believe you didn't understand Spanish very well?
A. Very imperfectly.
Q. Felix Buelna didn't speak English?
A. No, sir.
Q. Nor Padilla, either?
A. No, sir.
Q. And you had no interpreter?
A. Mr. Mathews was there.
Q. Is he much of a Spanish scholar?
A. I don't know.
Q. Didn't what you heard from Buelna come from Mathews?
A. No, sir.
Q. You understand some words when you hear them?
A. Yes, sir.
Q. But you were not able to carry on a conversation?
A. I managed to get along in my office.
Q. You understand part of it and guess at the rest?
A. Yes, sir.

87 By Mr. Archer:

Q. Are you satisfied that you did understand what Buelna was saying and meaning?
A. I did.

By Mr. Yoell:

Q. You were not sure you understood all he said?
A. Not all.

The foregoing is all the testimony given or offered upon the trial of said cause.

The court thereupon held and decided that the said premises described in the complaint, in possession of defendant Casanueva, were all included in the grant made by Felix Buelna to Vicente Padilla, and that said grant passed the title to all said land to said Padilla, from whom said defendant deraigns title, and so ordered judgment to be entered herein in favor of said defendant against the plaintiffs, upon the findings in writing filed herein.

The following is the testimony referred to by the witnesses whose testimony is given in the foregoing pages, and is annexed hereto for the purpose of explaining said testimony:

C. T. HEALY, called for plaintiff, sworn.

Examined by Mr. Yoell:

88 Q. I will read you a description from the complaint in this action—the amended complaint. (Reads the description.) Do you recognize those premises?
A. Yes, sir.
Q. State whether the premises described in this complaint was or are correctly laid down on that diagram. (Exhibit A.)
A. They are.
Q. Did you ever have pointed out to you, by any one, and, if so, by whom, the south line of that Casanova lot?
A. I have had it pointed out to me by Buelna and Manuel Narvaez.
Q. Who else? Was Juarez with you also at the time?
A. I am not positive. I remember those two distinctly.

Q. Who was present, if any person, as surveyor, besides yourself and these Spaniards, when they pointed out the south line?

A. A. T. Herman and S. W. Smith.

Q. I will read to you the description of two tracts of land set forth, the first in the grant by John Burton, alcalde, made to Felix Buelna, dated August 14th, 1847, and another, made by the same alcalde, on the same day, to John Frederic Romie, and will you state, after hearing the description read to you of those two grants, where the
89 land and premises described in those two grants are on that diagram? (Read, the descriptions from the two grants described.) State what premises these two grants describe with reference to that diagram and the complaint in this action.

(The witness explains on the map.)

Q. At the time you went on that lot, did you have these grants I have called your attention to in your hand?

A. Yes, sir.

Q. Was the old Monterey road pointed out to you at that time by these parties?

A. Yes, sir.

Q. With reference to that Monterey road as pointed out to you, as it ran in August, 1847, and these grants, can you say where the lands described in them lay, with reference to the complaint in this action, on that diagram?

(The lands pointed out north of the adobe house by witness, designated as Buelna's, on the diagram.)

Q. Where does this first grant lie with reference to that Cesena lot and the Monterey road?

A. That portion of the tract marked occupied by Casanova, bounded by Casanova lot and the old asequia substantially, and the Cesena lot on the northwest, I should say the first grant occupied the portion next to the asequia, and the other grant the northern portion of the lot marked as occupied by Casanova.

90 The COURT:

Q. The two grants are marked on that tract—marked on that diagram, "Casanova?"

A. Yes, sir.

Q. Does that embrace the land described in the complaint?

A. It does.

Cross-examination by Mr. Archer:

Q. Was not the location of the Monterey road as it existed in 1847, or about that time, pointed out to you by both these witnesses?

A. Yes, sir.

Q. Can you now mark on the map about where that road ran?

A. I understood it to be about midway between the Felix Buelna house, referred to, and the present Monterey road.

Q. Do these grants, or either of them, include that portion of the premises lying in to the east of that Monterey road?

A. Yes, sir.

Q. Which one?

A. The second.

Q. Would it include the whole of the premises at the time you
91 made the examination of the premises occupied by Casanova?

A. I think it would.

Q. Would it include the house in which they lived?

A. I think it would.

Q. Look at the description in the complaint, and state again where the land described in the complaint is on that map.

(The witness does so, and points out on the map.

It is admitted by plaintiff that the house now occupied by Mrs. Casanova is east of the grant, and is not included in the line of the grant as shown on the map.)

Q. Did you make that survey?

A. No, sir. It was made by Mr. Herman.

Q. Did you not go over the exterior lines of that diagram with Herman, in company with these Spaniards?

A. Yes, sir; we made some measurements there.

Q. Did you not find the objects as pointed out to you to be correct, as made by Mr. Herman?

A. Yes, sir.

(It is admitted that C. T. Healy is a practising surveyor.)

A. T. HERMAN, call for plaintiff, sworn.

Examined by Mr. Yoell:

Q. What is your profession?

92 A. Surveyor and civil engineer.

Q. Look at that diagram, marked "Exhibit A," and say who made that survey and diagram.

A. I did.

Q. From what did you make it?

A. From the original grant you have in your hands. (The original grant in evidence in this case.)

Q. Did you make that survey more than once? Did you not make it once by yourself, and the second time in conjunction with Chas. T. Healy?

A. Yes, sir.

Q. Did any one point out to you the lines of the Ceseña lot, laid down on that grant; and, if so, who?

A. Several Spaniards; Buelna was one of them. I forget the names of the others. I guess his name was Narvaez, but I am not sure. He was another Spaniard.

Q. Were do the premises lie on that map described in these grants?

A. The land lies between the base-line of the 500-acre lots and the old asequia, and bounded by the south line of the Ceseña lots on the north, and the line parallel to it, 75 varas distant from it, on the south.

Q. State what that pencil-line, A. J. H., represents.

93 A. It is an approximate line, or east base-line, of the 500-acre lots of the city of San José.

Q. The land described by you in these two grants, as shown on this diagram, is shown by this pencil-line marked "A. J. H.," and along the asequia on the south line of the alley, acording to the testimony of these Spaniards, on this red-ink line on the diagram?

A. Yes, sir; it is a correct location.

Q. Listen to the complaint in this action, and state whether these are the premises laid down on that map. (Reads the description from the complaint.) Where are those premises laid down on that map?

A. They are as described before, with the exception of the little piece between the base-line of the 500-acre lots and the present Monterey road.

Cross-examination by Mr. Archer:

Q. Who occupies the premises that were pointed out to you by these persons?

A. Charles Meserve.

Q. Then the alley itself, the south line of the alley, was that pointed out to you as the south line of the Ceseña lot?

A. Yes, sir.

94 Q. Do you know where the base-line of the 500-acre lot is?

A. Yes, sir.

Q. Did you ascertain it in any way?

A. From the field-notes of the Reed survey.

Q. Did you locate it?

A. Yes, sir; and I surveyed it from the Reed notes.

Q. Do you know how far that tract of land extends? Where would be that line?

V. It would be on the south line of the alley; about 68 feet from the west line of Monterey road and 75 varas south. It would be 56 feet; about 67 or 68 feet on the south line of the alley, and about 45 feet on the south line of the lot occupied by Casanova.

Q. You found that to be the base-line of the 50-vara lots?

A. Yes, sir.

Redirect examination by Mr. Yoell:

Q. Is that adobe house and the Ceseña lot correctly laid down?

A. Yes, sir; by the testimony of these Spaniards.

Q. What stands there now?

A. A barn.

95 Q. Does not the old Ceseña house, or Felix Buelna's house, form a portion of that barn?

A. That forms the foundation.

Q. Mesa was there then?

A. He was.

Q. Didn't he state that the adobe—the Casanova adobe—was that barn?

A. So far as I can remember, he said that the foundation was there still. He built the barn on top of it.

Q. Were these Spaniards present at the time, and pointed out the spot as the location of the adobe house?

A. Yes, sir.

Mr. Archer:

Q. They pointed out the location of the adobe house, and that Ceseña house extended to the south line of the alley?

VINCINTE JUAREZ, called for plaintiff, sworn.

(Examined by Mr. Yoell, through F. E. Spencer, acting as interpreter:)

Q. How long have you lived in this town?

A. Since the year 1833.

Q. Did you live here in the month of August, 1847?

96 A. Yes, sir.

Q. Do you know where Francis Ceseña lived at the time?

A. Yes, sir.

Q. Did you ever point out to these gentlemen here, Mr. Healy and Mr. Herman, the house where Francis Ceseña lived in 1847?

A. No, sir; I don't remember that I did.

Q. In the last year or so, did you ever point out Seseña's adobe to anybody—where it stood?

A. Yes, sir; I did.

Q. Were they surveyors or not?

A. I don't know whether they were surveyors, or particular individuals. We went in and showed the house where they went in.

Q. Was I there, (J. A. Yoell?)

A. I think you were there with the others, and went in. The foundation of the walls were pointed out.

Q. Do you recognize any of these gentlemen (Healy or Herman) as being present at that time with Mr. Yoell?

A. I know there were some gentlemen present when Mr. Yoell went, and I pointed out the house; but I don't know whether they were these gentlemen or not.

97 Q. Is the spot where you pointed out to them the foundation of the house a correct location of the Seseña house as it stood in 1847?

A. Yes, sir.

Q. Who occupies it now, and who occupied it when you pointed it out to me and these gentlemen?

A. It was occupied by Charles Meserve.

Q. In August of 1847 what was there, if anything, to designate the southern boundary of the Ceseña lot?

A. A fence.

Q. What kind of a fence was it?

A. It was a willow posts, with strips.

Q. Was there any alley-way anywheres near that at that time?

A. No, sir.

Q. Was there any road down to the creek anywheres near there?

A. Yes, sir; that is, behind his house.

Q. Was there any alley-way from the road to the Casanova house at that time?

A. No, sir.

Q. I mean to the Guadaloupe River?

A. No, sir.

Q. Do you know where the alley is now—the alley-way extending from the Monterey road to the creek?

98 A. Yes, sir.

Q. Is that alley-way north or south of the Ceseña southern fence as it stood in August, 1847?

A. There was no street on the south. That was vacant.

Q. Is that alley, as it stands now, north or south of the Ceseña line as it stood in 1847?

A. There was not any alley to the south; there was not any alley.

Q. Is there not an alley-way there now?

A. Yes, sir; now.

Q. On which side of that alley was Ceseña's southern line?

A. The lot of Ceseña's line to the south.

Q. South of what?

A. From this court-house it is south.

Q. Is it north or south of this alley?

A. The fence ran to the river.

Q. Did you know where the south fence of Caseña was in 1847?

A. Yes, sir.

Q. Which side of that fence did this alley-way run?

A. The side of the road towards Monterey.

Q. Didn't you say that you knew where Ceseña's southern fence was in 1847?

A. Yes, sir.

99 Q. On which side of that fence is that alley-way; north or south?

A. It lies on this side. North of the street that runs to the river.

Cross-examination by Mr. Archer:

Q. Did Francisco Ceseña build the adobe house of which you have been speaking?

A. No, sir.

Q. Who did?

A. Felix Buelna.

Q. Hadn't Felix Buelna occupied that house and lot before Ceseña?

A. Yes, sir.

Q. Did the Monterey road run in front of Ceseña's lot?

A. Right there where the stable is, ran the road.

Q. Are you sure Ceseña's lot was enclosed by a fence?

A. Yes, sir.

Q. When did you first see the fence on the south side?

A. Ever since the house was built.

Q. In what year?

A. 1844.

100 Q. Was the fence there during the year 1845?

A. It was; the same fence was there.

FELIX BUELNA called for plaintiff. Sworn.

Examined by Mr. Yoell, (through Mr. Spencer, acting as interpreter.)

Q. Where did you live in the mouth of August, 1847?

A. In the ranch of Narvaez.

Q. How far from this town?

A. Perhaps two and one-half miles from this town; from the populated portion.

Q. Did you know where Ceseña lived then?

A. Yes, sir.

Q. Where did he live then?

A. In the house at the canoes.

Q. Who built that house?

A. I did.

Q. When did you deliver possession of it to him?

A. In 1846.

Q. How long had you lived in it?

A. From 1844 to 1846.

Q. In August, 1847, what was there, if anything, to designate the southern line of this Francisco Ceseña lot which, you say, you sold him?

101 A. The fences that it had.

Q. Did you ever point out to Mr. Herman and Mr. Healy, in my presence, (Yoell,) that house of Ceseña's, and those fences which you speak of?

A. At what date?

Q. At any time during the last year or so?

A. It is now going on two years since I pointed them out.

Q. Was that before the former trial of this action in this court?

A. Yes, sir.

Q. Did you point out where Ceseña's house stood in 1847 to these surveyors?

A. I did; to Mr. Herman and Healy.

Q. Was that location, as pointed out by you, correct, as it stood in 1847?

A. Yes, sir.
Q. What was there on the spot pointed out by you as the house?
A. We found a large house, which answers the purpose of a stable.
Q. To whom does it belong?
A. I have heard say that it belongs to Charles Meserve.
Q. What Charles Meserve?
A. I don't exactly know personally, but I have heard it called something like that?
102 Q. Was there any alley-way from the Monterey road to the river at that time?
A. Yes, sir.
Q. Is that alley-way north or south of where Ceseña's southern fence was in August, 1847?
A. It is to the south.
Q. Is the alley-way south of the fence or the fence south of the alley-way?
A. Do you ask me whether the fence is to the south or north of the alley-way?
Q. Is the fence north or south of the alley-way?
A. The fence was on the north of the alley-way.
Q. Is there not a fence south of the alley-way?
A. When I went to point out there was; but formerly, when I gave possession, there was not a fence on the south side of the alley.
Q. Is that alley upon the Ceseña lot or south of it?
A. It is south of the lot of Ceseña.
Q. Can you tell what distance there was, in 1847, between Ceseña's south fence and this adobe you pointed out?
A. Yes, sir; more or less I can tell, but not exactly how many feet or varas.
Q. Between the south line of the adobe and the south fence, what was the distance?
A. More or less, some fifty varas.
103 Q. Did you point out the south line of that alley as the south line of the Ceseña's lot to the surveyors?
(Objected to as leading and objection sustained.)
Q. Did you point out to the surveyors the south line of the Ceseña lot?
A. Yes, sir.

Cross-examination by Mr. Archer:

Q. Where is that south line as you pointed it out to the surveyors?
A. Taking the measurement from where the adobe house was to the fence——
Q. What fence do you mean?
A. That which is on the alley.
Q. On the north or south side of the alley?
A. On the south side.
Q. Didn't you say a while ago that it was on the north side?
A. You gentlemen don't understand how to explain, or how to say, or how to interpret. Supposing tha' there is a house here and the alley there, about the first fence of the alley is what I understand you to ask me.
Q. Is that the fence you pointed out to the surveyors as being the south line of the Ceseña lot?
A. Yes, sir.
104 Q. Do you state positively that it was fenced on the north side

of the alley that you pointed out as being the south line of the Ceseña lot?

A. The side around the north of the alley is the same line of the lot.

Q. How are you able to know where was the south line of the Ceseña lot?

A. By the same measurement of the land from where the adobe house was.

Q. How far, then, did the Ceseña lot extend to the south of the adobe house?

A. Some fifty varas.

Q. How do you know that?

A. Because I know where my house was. My house was on the north of the solar.

Q. How large was your solar?

A. Fifty varas front, and in depth to the canoes.

Q. How large was the house?

A. It was of inferior size—it was small—some ten varas in length and about five varas wide.

Q. Which way was the length—north or south, east or west?

A. From the east to the west. The door looked to the south.

Q. On which side of the house was the Monterey road?

A. On the east side.

105 Q. How far from the adobe was the Monterey road?

A. Fifty varas, more or less.

Q. Did your lot front on the Monterey road?

A. No, sir.

Q. Was not there a lot between your lot and the Monterey road?

A. At that time in front there was none.

Q. How far was it from the Monterey road to your house?

A. Some fifty varas, more or less.

Redirect examination by Mr. Yoell:

Q. In 1847, as I understand you, there was only one fence south of the Ceseña lot; now there is two.

A. Formerly there was but one, and that was mine; now there is two.

Recross-examination by Mr. Archer:

Q. When was that fence built of yours?

A. In 1845.

Q. What time in 1845?

A. In the month of June or July. I put three willow poles to protect my corn.

106 C. T. HEALY recalled.

Examined by Mr. Yoell:

Q. When Buelna pointed out to you the southern line of the Ceseña lot, as it was in 1847—to you and Herman—did he point out the north line of that alley?

A. The south line.

Q. As it now exists, and is shown on this diagram?

A. Yes, sir.

Q. Did you and Herman, in conjunction, make measurements between the distance of the south and north line of that alley?

A. Yes, sir, we did.

Q. What distance was it?

A. I think it was fifty varas and a little more.

Q. How far is it back from the present Monterey road?

A. About the same distance, more or less.

Q. Is it about fifty varas westerly from the Monterey road?

A. Yes, sir.

107 On the 6th day of November, 1871, notice of the filing of the findings in this case was duly served on plaintiff's attorneys; and, on the 16th day of November, 1871, the plaintiff's attorneys duly served and filed notice of intention to move for a new trial, which notice is as follows:

[Title of court and cause.]

The plaintiffs hereby give notice that they intend to move for a new trial of this action, so far as the same may affect the defendant, Teresa Casanova, and no farther; and to set aside the judgment and findings, rendered and entered herein, in favor of said defendant Teresa Casanova, on the following grounds, to wit:

Newly-discovered evidence, material for the party making this application, and which they could not with reasonable diligence have discovered and produced at the trial.

Insufficiency of the evidence to justify the decision, and that said decision is against law.

Errors in law occurring at the trial, and excepted to by plaintiffs.

J. ALEXANDER YOELL and
S. O. HOUGHTON,
Attorneys for Plaintiffs.

108 And afterwards, on the same day, the court commissioner of this court made an order in the words following, viz:

[Title of court and cause.]

In this action, it is ordered that the plaintiffs have twenty-five days, from and after service of notice of intention to move for a new trial of said action, within which to prepare and file their statement on motion for a new trial of this action.

C. B. YOUNGER,
Court Commissioner.

And afterwards, on the 8th day of December, 1871, the plaintiffs' statement on motion for a new trial was filed.

And now the said plaintiffs come and move the court to grant them a new trial in this action, and present this, their statement, on motion for a new trial; and state the following grounds upon which they will rely on said motion:

First. Insufficiency of the evidence to justify the decision; and the same is against law.

1st. That the grant to Padilla, under which the defendant claims title to the demanded premises, does not include said premises, of which she has the possession; nor does it include any part of the premises described in the complaint.

109 2d. Said grant to Padilla is void for uncertainty, and does not describe any parcel of land whatever; and no title passed thereby to any piece of land whatever.

3d. If any land was described in said grant to Padilla, the description did not include any of the premises claimed in this action.

4th. The deed from the fund commissioners of the city of San José

did not pass any title, because the title was already vested in the plaintiff, or those from whom they derive their title. The title had been before then vested in private proprietorship by the grants made by Burton, alcalde, on the 14th day of August, 1847, and there is no evidence sufficient to establish any title or right of possession in the defendants, except that which was derived through said grant to Padilla, and the deed from the fund commissioners.

5th. There is no evidence sufficient to show that the grant to Padilla, if it granted any land, was for the land claimed or any land south of the alley shown on "Exhibit A;" but the testimony all shows that if any land was granted to Padilla by said grant it was situate south of the adobe house of Felix Buelna, and north of the premises in controversy.

7th. The plaintiffs having shown title to the premises in ques-
110 tion, through the grants and deed of August 14th, 1847, were entitled to recover. The decision of the court was therefore against law, and should have awarded to the plaintiffs a judgment for the possession of the demanded premises, because the testimony shows that they had a title and right of possession which was not barred.

Second. Errors in law, occurring at the trial and excepted to by the plaintiffs, as follows:

1st. The court erred in overruling the plaintiff's objection to the following question, put to the witness Vicente Padilla: "Where is the land that Felix Buelna gave or granted to you?"

2d. The court erred in admitting in evidence the grant to Juan Narvaez, made February 12th, 1844, and the grant to Felix Buelna, made in February, 1844.

3d. The court erred in sustaining the objection of the defendant's counsel to the following question put to the witness Wesley Smith: "Would you be justified in rejecting the word house, and putting the word lot?"

J. ALEXANDER YOELL AND
HOUGHTON & REYNOLDS,
Attorneys for Plaintiffs.

Filed December 8th, 1872.

JOHN M. LITTLEFIELD, *Clerk.*

111 The said defendant, Teresa Casanova, not waiving her right to object that plaintiff's statement, on motion for a new trial, was not filed in due time, but protesting that the statement was not filed in the time allowed by law, or by any stipulation, or valid order, and averring her determination to insist that the same should be disregarded in this and the supreme court, has prepared amendments, and now unites in this certificate.

And it is hereby agreed and certified that the foregoing statement is true and correct, and that the same may be treated and used as an engrossed, settled statement on motion for new trial.

L. ARCHER,
Attorney for Def't, Teresa Casanova.
HOUGHTON & REYNOLDS,
Attorneys for Plaintiffs.

Order overruling motion for new trial.—Entered January 26, 1872.

[Title of cause.]

The motion of defendant, heretofore filed, to strike out and disregard the statement on motion for new trial in this cause, coming on to be

heard, is by the court overruled and denied, to which ruling of the court defendant now excepts.

112 The motion for new trial in this cause coming on to be heard was argued by the attorneys for plaintiffs, and defendant Teresa Casenova appeared only for the purpose of objecting that the statement on motion for new trial was not filed within the time allowed, whereupon the court held said statement to have been filed in due time, to which ruling said defendant then and there excepted; and the motion for new trial having been submitted, the court overruled said motion for a new trial, to which ruling plaintiffs then and there excepted.

Notice of appeal.—Filed March 11, 1872..

[Title of cause.]

You will please take notice that the plaintiffs in the above-entitled action hereby appeal to the supreme court of this State from the judgment therein made and entered, in the third judicial district court, on the 3d day of November, A. D. 1871, in favor of the defendant Teresa Casanova, in said action, and against said plaintiffs, and from the whole thereof; and from the order made and entertained therein on the 26th day

113 of January, A. D. 1872, refusing to grant to plaintiffs a new trial of said cause.

Dated this 11th day of March, A. D. 1872.

Yours, &c.,

HOUGHTON & REYNOLDS,
Attorneys for Plaintiffs and Appellants.

To the clerk of said district court, and L. Archer, esq., attorney for def't and resp't.

Service of the foregoing notice of appeal admitted, this 11th day of March, 1872, after filing the original.

L. ARCHER,
Att'y for Respondent.

We hereby certify and agree that the foregoing printed pages contain a full and correct transcript on appeal in the foregoing entitled action. And that an undertaking was duly filed on the said appeal on the 11th day of March, 1872, after the filing and service of the notice of appeal.

HOUGHTON & REYNOLDS,
Atty's for Appl's.

L. ARCHER,
Att'y for Resp't.

(Here follows map, marked page 113.)

114 In the supreme court of the State of California, October term, 1872.

ROMIE *vs.* CASANOVA. } No. 3436.

The court below finds that the demanded premises were granted by the alcalde to the defendant's grantor in 1845, and that juridical pos-

session thereof was given. We think the evidence justified the finding. The words in the grant: "This lot being situated to the south of the house of the citizen, Buelna," do not necessarily imply that the lot was immediately adjoining the house of Buelna. It may well have been, where the court finds it was, to the south of the Buelna lot.

Judgment and order affirmed.

I, Grant I. Taggart, clerk of the supreme court of the State of California, do hereby certify that the preceding and annexed contains a true and correct copy of the original opinion and judgment delivered in the above-entitled cause on the 29th day of November, A. D. 1872, and now on file in my office.

Witness my hand and the seal of the court this 30th day of May, A. D. 1873.

GRANT I. TAGGART, *Clerk.*

115 In the Supreme Court of the United States.

MARIA ROMIE, ET ALS., PLAINTIFFS IN ERROR,
vs.
TERESA CASANOVA, DEFENDANT IN ERROR.

Know all men by these presents that we, James F. Reed, jr., and C. D. Wright, both of the city of San José, county of Santa Clara, State of California, are held and firmly bound unto Teresa Casanova, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals and dated January 30th, 1873.

116 Whereas the above-named Maria Romie et als. has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered by the supreme court of the State of California, in an action wherein said Maria Romie et als. are plaintiffs and Teresa Casanova is defendant: Now, therefore, the condition of this obligation is such, that if the said Maria Romie et als. shall prosecute their said writ of error to effect, and to answer all damages and costs, not exceeding the sum of three hundred dollars, in case they shall fail to make good their plea, then this obligation to be void; otherwise, to remain in full force and virtue.

C. D. WRIGHT. [SEAL.]
JAMES F. REED, JR. [SEAL.]

117 STATE OF CALIFORNIA,
County of Santa Clara, ss:

James F. Reed, jr., and C. D. Wright, the sureties named in the foregoing bond, being each duly sworn, each for himself says that he is a resident of the county of Santa Clara, State of California, and a freeholder therein; that he is worth double the amount of the penalty of the above bond over and above all of his property which is by law exempt from execution.

C. D. WRIGHT.
JAMES F. REED, JR.

Subscribed and sworn to before me this 30th day of January, A. D. 1873.

[SEAL.] E. W. ARAM,
Notary Public.

The foregoing bond is approved as to the amount, form, and sufficiency thereof, and sufficiency of the sureties therein named as obligees.

WM. T. WALLACE,
Chief-Justice Supreme Court.

118 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the justices of the supreme court of the State of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court, before you, between Maria Romie, Paul Romie, Charles Romie, Ernest Romie, and Mary Jacks and her husband, David Jacks, plaintiffs in error, and Teresa Casanova, defendant in error, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the first Monday of December next, in the said United States Supreme Court to be there and then held, that, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States of America may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. N. Clifford, associate justice of the Supreme Court of the United States, this first Monday of December, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-seventh.

{ SEAL OF STATE } { SUPREME COURT. }

L. S. B. SAWYER,
Clerk U. S. Circuit Court, 9th Cir., Dist. Cal.

The above writ of error is hereby allowed.

WM. T. WALLACE,
Chief-Justice Supreme Court State of Cal.

119 *The answer of the justices of the supreme court of the State of California.*

The record and proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States of America within mentioned, in a certain schedule to this writ annexed, as within we are commanded.

By the court:

[SEAL.]

GRANT I. TAGGART,
Clerk of Supreme Court State of California.

(Indorsed:) United States Supreme Court. Maria Romie et al., plffs. in error, vs. Teresa Casanova, deft. in error. Writ of error.

120 UNITED STATES OF AMERICA, *ss:*

To Teresa Casanova, greeting:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States of America to be held at the city of Washington, in the District of Columbia, on the first Monday of December, A. D. 1873, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, wherein Maria Romie, Paul Romie, Charles Romie, and Mary Jacks and her husband, David Jacks, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable William T. Wallace, chief-justice of the supreme court of the State of California, this third day of February, A. D. 1873, and of the Independence of the United States the ninety-seventh.

[SEAL.] WM. T. WALLACE,
Chief-Justice of Supreme Court State of California.

Service of a copy of the foregoing is this day acknowledged.
February 4th, 1873.

L. ARCHER,
Atty. for Teresa Casanova.

(Indorsed:) United States Supreme Court. Maria Romie et al., plffs. in error, vs. Teresa Casanova, deft. in error. Citation.

121 Supreme court of the State of California.

ROMIE
v.
THOMAS ET AL.

It is agreed that the transcript in this case need not be filed until the first day of August, 1872, provided that the time for filing the same under the law, rules of court, and previous stipulations has not yet expired.

June 24, 1872.

L. ARCHER,
Attorney for Respondent.

(Indorsed:) 3436. Romie v. Casanova. Stipulation. Filed August 1st, 1872. Grant I. Taggart, clerk, by Allen Tillinghast, D. C.

Received copy of the within transcript this 30th day of May, 1872, and consent that the same be filed at any time within 30 days.

L. ARCHER,
Atty. for Respondent.

Filed August 1st, 1872.

GRANT I. TAGGART, *Clerk*,
By ALLEN TILLINGHAST, *D. C.*

(Indorsement on cover:) No. 127. Maria Romie, Paul Romie, Charles Romie, Ernest Romie, and Mary Jacks & her husband, David Jacks, plaintiffs in error, vs. Teresa Casanova. California sup. court. Filed 16th December, 1873.

No. .....

IN THE SUPREME COURT

OF THE

UNITED STATES.

MARIA ROMIE, ET ALS,

Plaintiffs in Error,

VS.

TERESA CASANOVA,

Defendant in Error.

Brief for Plaintiffs in Error.

HOUGHTON & REYNOLDS,
For Plaintiffs in Error.

SAN JOSE:
BENJ. H. COTTLE, PRINTER, 314 MARKET STREET.
1875.

IN THE SUPREME COURT

OF THE

UNITED STATES.

MARIA ROMIE, *et als*,

Plaintiffs in error,

vs.

TERESA CASANOVA,

Defendant in error.

BRIEF FOR PLAINTIFFS IN ERROR.

Statement of Facts.

This action is ejectment, the plaintiffs claiming title under two grants, as follows:

The Alcalde of the Pueblo de San Jose, on the 14th day of August, 1847, made a grant to Felix

Buelna of a lot in said pueblo, "bounded northeast by the road to Monterey, northwest by the lot of Francisco Cesena, and by the water on the rear, and containing seventy varas in front, and running back on the south line one hundred and fifty varas. [Fol. 12.]

By deed of the same date the grantee, Felix Buelna, conveyed said lot to John Frederick Romie. [Fol. 13.]

The same Alcalde, by grant of the same date last mentioned, made a further grant to said John F. Romie, of a lot in said pueblo, "bounded in front by the base line run by James D. Hutton, Esqr., and extending from said line to the rear, to a lot granted to Felix Buelna, and being seventy-five varas in front, and having fifty-eight varas in depth on the south line." [Fol. 14.]

John Frederick Romie died in 1849, intestate, the plaintiffs being his widow and children. When this action was commenced the defendant, Teresa Casanova and her husband were in possession of that part of the demanded premises shown and designated on the diagram "Exhibit A," marked, "occupied by Casanova." [Fol. 15.] The two grants made by the Alcalde embrace all the lands described in the complaint, and include the land designated on Exhibit A as "occupied by Casanova."

The lands described in said grants and deed are within, and formed a part of the pueblo lands of said pueblo, and the claim of said pueblo was finally confirmed to the city of San Jose by the tribunals of the United States having jurisdiction therein, less than five years before the commencement of this action. [Fol. 15.]

The defendant, Teresa Casanova, claims title under a grant made by Felix Buelna. Alcalde of San Jose, dated June 17th, 1845, with the following description, to wit: "A lot of fifty varas front, and a hundred deep, this lot being situated to the south of the house of the citizen Felix Buelna, and in this municipality. [Fol. 17.]

The genuineness and due execution of all of said grants is conceded. [Fol. 11 and 18.]

There was a finding and judgment in the court of original jurisdiction in favor of the defendant, Teresa Casanova. [Fol. 8½, 10.]

The plaintiffs moved for a new trial, and filed a statement in support of their motion. [Fol. 11 to 110 inclusive.]

The motion for a new trial was denied. [Fol. 112.] An appeal was taken from the judgment and from the order denying a new trial [fol. 112, 113,] to the Supreme Court of California, [fol. 112,] where the judgment and order were affirmed [fol. 114] and the cause was brought to this court by writ of error. [Fol. 118.

Assignment of Errors.

1*st*. The evidence does not justify the finding that the plaintiffs are not and never were the owners of any part of the premises designated on the map Ex. A as "occupied by Casanova."

2*d*. There is no evidence to justify the finding that the lot granted to Padilla is located immediately south of the lot known as the Cesena lot, and within the boundaries named in the complaint.

3*d*. The evidence does not justify the finding that possession was delivered to Padilla, of the lot granted to him.

Points and Argument.

I.

THIS COURT HAS JURISDICTION.

The grants under which the plaintiffs claim title to the demanded premises, are derived from the Mexican authorities of the Territory of California, and their validity depends upon the treaty between the United States and Mexico, by which California was ceded to the United States, and upon the acts of Congress relating to the settlement of private land claims in this State. The right

and title of the plaintiffs being denied, this Court has jurisdiction.

Rev. Stat. of the U. S., Sec. 709, page 132.

II.

THE TWO GRANTS PROVED BY PLAINTIFFS, AND WITH WHICH THEY CONNECT THEMSELVES, ESTABLISH TITLE IN THEM TO THE LAND IN QUESTION.

The grants to Buelna and to Romie include all of the demanded premises, [folio 88 to 90 inclusive,] and embrace all that part thereof occupied by the defendant, Casanova, except the narrow strip lying between the Monterey road and the pencil line "A T H," as shown in the map "Exhibit A" in the record. [Fol. 16.]

Felix Buelna having conveyed to John Frederick Romie the lot granted to him, [fol. 13] and the plaintiffs being his heirs at law, are the owners of said premises, and entitled to recover the same; unless the grant made to Padilla, under which the defendant claims, includes the part thereof occupied by her.

III.

THE GRANT TO PADILLA DOES NOT INCLUDE ANY PART OF THE DEMANDED PREMISES.

There is but one locative call contained in this

grant; one object only being mentioned or referred to by way of description, to wit: the house of Felix Buelna.

The grant is of "a lot fifty varas front and a hundred deep, this lot being situated to the south of the house of the citizen Felix Buelna, and in this municipality." [Fol. 17.] The first descriptive clause standing alone, is so vague and uncertain that the grant would be void for uncertainty, unless the second clause, which gives its only abuttal, will render it sufficiently definite as to admit of its location.

The house of Buelna, and not his lot, is the call of the grant, and this call must control its location.

Kronenberger vs. Hoffner, 44 Mo., 185.

But one location is possible of such a description. It must be made in the form of a parellelogram, having the centre of the south side of the house of Buelna for the centre of the base or north line; the short line being evidently the front, the north line would extend twenty-five varas east, and the same distance west from the center of the house on such base line.

If the west side of the Monterey road should be taken for the front of the lot, it would necessarily extend west and not south for depth.

If, however, it should be considered that the Monterey road is the front called for in the grant, the location must still be in the same form, having the centre of the south side of the Buelna house for the centre of the north line, and extending on this line from the centre of the house, east fifty varas and west fifty varas. Neither of these locations will cover or include any part of the demanded premises. [Fol. 75–82.]

In the case of Massie *vs.* Watts, 6 Cranch, 165, the rule governing the location of descriptions like that in question, is stated as follows: "When a given quantity of land is to be laid off on a given base, it shall be included within four lines, so that the lines proceeding from the base shall be at right angles with it, and the line opposite the base shall be parallel to it. The consequence of this principle is, that if the calls of an entry do not fully describe the land, but furnish enough to enable the court to complete the location by the application of certain principles, they will complete it."

See also Shipp vs. Miller's Heirs, 2 Wheat., 323.

Bodley vs. Taylor, 5 Cranch, 226.

Jackson vs. Wilkinson, 17 John, 157.

The Supreme Court of California in its opinion in this case says: "The words in the grant,

'this lot being situated to the south of the house of the citizen Buelna,' do not necessarily imply that the lot was immediately adjoining the house of Buelna. It may well have been where the court finds it was—to the south of the Buelna lot." [Fol. 114.]

In the case of Chinoweth vs. Lessee of Haskell, 3 Pet., 96, this Court said: "It is an obvious principle that a grant must describe the land to be conveyed, and that the subject granted must be identified by the description given of it in the instrument itself."

This well settled and sound principle seems to have been overlooked by the Supreme Court of California, as well as by the court of original jurisdiction.

Where a grant contains descriptive calls, which are so indefinite and uncertain that they can be located in more than one way, and there is a certain descriptive call in the grant, the indefinite and uncertain calls may be rejected, and that which is certain adopted, even though the latter be inconsistent with the first; but we know of no principle which authorizes the rejection of a certain call found in a grant, and the substitution therefor of an indefinite call not contained in the grant.

If it be true that the call for the house does not necessarily imply that the lot granted was immediately adjoining the house of Buelna, is it not equally true that if the word "lot" be substituted for "house" the same result would follow, to wit: That the word lot would not necessarily imply that the Padilla lot should be located immediately adjoining the lot of Buelna. If such be the case, a location anywhere south of the Buelna lot would answer the interpolated call.

IV.

NO JURIDICAL POSSESSION WAS PROVED. JURIDICAL POSSESSION MUST BE OF THE LAND GRANTED.

The Supreme Court of California assumes that the Court below found that juridical possession was given of the Padilla lot. If such be the effect of the finding; that the Alcalde measured the lot and delivered to said Padilla the possession thereof, it is not justified by the evidence. No record of any juridical measurement or delivery of possession was produced or offered in evidence at the ~~time~~ true. The parol proof admitted against the objections of plaintiff was incompetent.

A record is required to be made of the giving of juridical possession, and such possession can only be proved by the record.

Graham vs. United States, 4 Wal., 261.

Malarin vs. United States, id, 289–90.

Felix Buelna, the Alcalde who made the grant to Padilla, testifies that he did not give him such possession. [Fol. 50.]

If it be true, as claimed by defendant, that Padilla entered upon that part of the demanded premises occupied by Casanova and remained there four or five months, such entry would not attach his grant to that land, the calls of the grant locating it elsewhere. That he did not occupy that land is clear; the proof is overwhelming that the ramada or bush house occupied by Padilla was on the Cesena lot, near the Buelna house, as represented in Exhibit A. (Fol. 48, 49, 58, 74.)

Padilla himself says it was ten or fifteen paces from Buelna's house. (Fol. 29–30.)

It is submitted that the judgment and order should be reversed, and a new trial granted.

HOUGHTON & REYNOLDS,
For Plaintiffs in Error.

Service accepted by copy, this.....*day of*

.....*187*

.....

Attorney for Respondent.

In the Supreme Court of the United States.

No. 127.

MARIE ROMIE ET ALS, PLAINTIFFS IN ERROR

vs.

TERESA CASANOVA, DEFENDANT IN ERROR.

BRIEF OF DEFENDANT IN ERROR.

Defendant in error moves the dismissal of the writ of error in this case, on the ground that this court is without jurisdiction, as no federal question is involved.

This cause has been brought to this court from the Supreme Court of California on a writ of error.

The cause of action is a claim set up by the plaintiffs in error to lands occupied, and alleged by defendant in error, to be owned by her. The source of the respective titles to the property in question was the same grantor, to wit, the municipality of San José. There is no question as to the ownership of the town or municipal corporation of San José. (Record, p. 6.) This fact is admitted. It is a simple contest between two suitors, as to the ownership of the land in question, where neither party derived title from the United States. There is not "drawn in question the validity of a treaty or Statute, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a Statute of, or an authority exercised under, any State on

the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of such, their validity; or where is drawn in question the construction of any clause of the Constitution, or a treaty, or Statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party under such clause of the said Constitution, treaty, Statute or commission." The question is too plain to need the citation of an authority.

Shaffer vs. *Scuddy*, 19 How., 16.

ON THE MERITS.

This was an action brought by the plaintiff in error to recover from the defendant in error the lands in dispute.

The action was originally against Francisco and Teresa Casanova, Francisco having died before the termination of the suit, it was continued in the name of Teresa Casanova. (Record, p. 5.) The cause was tried by the Court without the intervention of a jury. On the trial the plaintiff introduced two deeds of the premises, one from John Burton, first alcalde of the pueblo de San José on the part of the said pueblo, to Feliz Buelna, and another from Feliz Buelna to plaintiffs in error, (Rec. p. 5.) The first conveyance bore date August 14, 1847, and the second was of the same date. A third conveyance was made by John Burton, alcalde to plaintiffs in error. All of these documents where written on the same piece of paper, and bear the same date, and are as follows, to wit:

"JUSGADA DEL PUEBLO DE SAN JOSE DE GDE."

"Whereas, Feliz Buelno, a citizen of the pueblo de San José de Gde., has applied to this office for a building lot adjoining the Canoas, and said lot being vacant, this, therefore, is to certify that I, John Burton, first alcalde of the pueblo de San José de Gde., on the part of the said pueblo, for and in consideration of the sum of what is

specified by law, receipt whereof is hereby fully acknowledged, hath bargained, sold and conveyed unto said Feliz Buelno, and to his heirs and assigns forever, a tract or messuage of land, lying, and being in the pueblo de San José de Gde., on the south end of said town, being bounded northwest by the road to Monterey, northwest by the lot of Francisco Sesnana, and by the water in the rear, and containing seventy-five varas in front, and running back on the south line one hundred and fifty varas. To have and to hold the same, with all the rights and privileges thereunto belonging, conditioned that the same be fenced or a building erected thereon, on or before the expiration of twelve months from the date of this instrument.

In witness whereof, I have hereunto affixed my hand and seal this 14th day of August, 1847.

JOHN BURTON."

"I, Feliz Buelno, for and in consideration of the sum of eighty-five dollars, to me in hand paid by John Frederick Romie, a receipt whereof is hereby fully confessed and acknowledged, hath bargained, sold and conveyed unto the said John Frederick Romie, and to his heirs and assigns forever, a messuage or tract of land lying and being in the pueblo de San José de Gde., and known to be near the Canoas, and fully described in the within deed.

In witness whereof, I have hereunto set my hand and seal in behalf of my heirs and assigns, this 14th day of August, A. D. 1847, in the presence of the alcalde and assisting witnesses.

FELIZ BUELNO.

Witnessed,
CARLOS GLEIN.
CHARLES WHITE, *Clerk*."

"JUSGADE DEL PUEBLO DE SAN JOSE DE GDE.

Whereas, John Frederick Romie has applied to this office for a building lot, being in front of a lot sold to

Feliz Buelno, and bounded on the base line made by James D. Hutton, Esq., and said lot being vacant.

This, therefore, is to certify that I, John Burton, first alcalde of the pueblo de San José de Gde., on the grant of said pueblo, for and in consideration of the sum of what is specified by law, receipt whereof is hereby fully confessed and acknowledged, hath bargained, sold, and conveyed to the said John Frederick Romie, to his heirs and assigns forever, a tract of land in the aforesaid pueblo, on the south end of said town, and being bounded in front by the base line run by James D. Hutton, Esq., and extending from said line to the rear to a lot granted to Feliz Buelno, and being seventy-five varas in front, and having forty-eight varas in depth on the south line. To have and to hold the same, with all the rights and privileges thereunto belonging, conditioned and provided that the said John Frederick Romie will fence said lot with redwood fence, or erect a dwelling thereon, on or before the expiration of twelve months from this date.

In witness whereof, I have hereunto set my hand and seal this fourteenth day of August, A. D. one thousand eight hundred and forty-seven.

JOHN BURTON, *Alcalde.*"

It was admitted that the foregoing instruments of writing and the signatures were genuine, and that John Burton was alcalde.

The defendant introduced in evidence the following conveyance to establish her titles, to wit:

"This is granted to the neighbor Bisento Padia, a lot fifty varas front and a hundred deep, this lot being situated south of the house of the citizen Feliz Buelna, and in this municipality.

"Pueblo de San Jose Guadalupe, Dec. 17, 1845.

FELIZ BUELNA."

—(Record, pp. 5, 6 and 7.)

This instrument was admitted to be genuine, and that

the said Buelna was alcalde at the time and signed the document in such capacity, and that it was properly recorded, &c.

Defendant also introduced and read in evidence a deed from said Padilla purporting to convey her the premises in controversy, bearing date Sept. 1, 1866. Also a deed from the commissioner of the funded debt of the city of San Jose, conveying the premises to her, bearing date, &c. (Record, p. 7.)

The controversy turns wholly to the deed of Buelna to Padilla, as to the premises conveyed. Here was the real difficulty in the case. To make this perfectly clear, the defendant introduced parol testimony, to show what premises were included by that conveyance to Padilla. This testimony was objected to by the plaintiff. (Rec., page 8, and marginal page 20.) This objection was also insisted upon as the 1st error in law on the motion for a new trial. (Rec., p. 48.)

1st. This objection is not well taken. It is too well settled to be now an open question, that parol testimony may be offered to identify the thing described, and in no State has this rule been further carried than in the State of California.

Began v. *O'Reiley*, 32 *Cal.*, 11.
Jenny Lind Co. vs. *Bower*, 11 *Cal.*, 195.
Ferris vs. *Coover*, 10 *Cal.*, 589.
Beamer vs. *Nesmith*, 34 *Cal.*, 624.

Also,

U. S. vs. *Pachecho et als*, 22 *How.*, 225.

Vol. 2 Phillips on Evidence. Cowen & Hills and Edwards' notes, p. 718.

2d. The second assigned error of law is not well made, because, as it appears, the conveyances mentioned were offered in evidence without objection. (Record, p. 7, marginal p. 17.)

3d. The third error assigned (Rec., p. 32) has no foundation. To have permitted the witness to have answered the question, "Would you be justified in rejecting the word house, and putting the word lot?" would have been substituting his opinion for the judgment of the Court or the verdict of the jury.

Winans vs. *N. Y. and Erie R. R.*, 21 *How.*, 100.
U. S. vs. *McGlue*, 1 *Curt.*, 1.
The Clermont, 2 *Curt.*, 363.

But whether the ruling of the Court be erroneous or not, at the time plaintiff excepted to it, her question which had been ruled out, was subsequently and almost immediately thereafter, substantially answered, (Record, p. 32, margin page 82,) and the plaintiff has suffered no wrong.

FINDINGS OF THE COURT. (Rec., p. 3.)

This cause was tried in the district court of the third judicial district of the State of California, Santa Clara county, by the judge without the intervention of a jury, and the judge, as he might do, filed his findings in the nature of a special verdict,

Trial by jury may be waived by the several parties to an issue of fact.

California Code of Civil Procedure, Sec. 631.

The findings of fact in this case shall have the same effect as the verdict of a jury. Nothing, therefore, is open to re-examination in this case except such rulings of the Court, made in the progress of the trial as are presented by a bill of exceptions or questions of law as may appear from the face of the record.

Graham vs. *Bayne*, 18 *How.*, 60.
Jus. Co. vs. *Folsom*, 18 *Wall*, 237.
Dirst vs. *Morris*, 14 *Wall*, 484.

It would be useless to cite other authorities. The Court

is not going behind the finding of facts. The judge who tried the cause, had all the witnesses before him, and who so competent to judge of their competency and credibility.

The Supreme Court of California, after an examination of the case, affirmed the judgment of the lower Court. (Rec., p. 44.)

Defendant in error, therefore, asks that the judgment of State Courts be affirmed with costs.

JOHN A. GROW,
Attorney for Deft. in Error.

In the Supreme Court of the United States.

No. 127.

MARIE ROMIE ET ALS., [redacted] Plffs in Error

vs.

TERESA CASANOVA, [redacted] Def'dts in Error

ADDITIONAL POINTS AND AUTHORITIES.

I.

This Court will not assume a Federal question to exist where the record does not disclose one.

Caperton vs. Boyer, 14 Wall., 216.
Hurley vs. Street, 14 Wall., 85.

II.

If it appear from the record that a decree can be sustained on other grounds, other than the Federal question, it is sufficient to support it.

Kennebec R. R. vs. Portland R. R. Co., 14 Wall., 23.
Steine vs. Franklin Co., 14 Wall., 15; 14 Pet., 328.

III.

This Court has repeatedly reasserted the proposition that unless it can be seen from the record that a state court decided the question relied upon, to give this Court jurisdiction, the writ of error will be dismissed.

Cockraft vs. Vase, 14 Wall., 5.
People vs. Central R. R. 12 Wall., 455.
Lamber vs. Walker, 14 How., 149.

IV.

No Federal question was ever raised below in either of the Courts, and it is raised here for the first time. If it be held that a contest of this character involved such a question, then any suit where title to realty is in dispute, where it may have been derived at any time, however remote, from the United States, could be brought here for review.

JOHN A. GROW,
Of Counsel for Defendants in Error.